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THE POLITICAL INFLUENCE OF ANDREW JACKSON.

ON the fourth of March, 1837, Andrew Jackson was able to review his completed official career with a degree of complacency rare, if not unique, in the annals of magistracies. It was an almost unbroken succession of victories that he looked back upon. He had signally triumphed over his political rivals, Clay and Calhoun. He had destroyed the bank, and broken the rule of the classes and the party which supported it. He had subjected Congress to his will, and extorted from the Senate the "expunging resolution." His course toward nullification had been courageous and consistent, and had increased his power and fame. His conduct of foreign relations had been successful. He had reorganized and disciplined the democratic party. He had named his successor. Moreover — and it was this that gratified him most — he believed that in all his warfare he had fought and won, not for himself, but for the people; and he knew from full and grateful testimony that this was their view, and that they honored him as their faithful and invincible champion. His farewell address testifies, it is true, to a feeling of disquietude on account of the growth of sectionalism. But for this he could not justly hold himself responsible; and his firm trust in the people, now through his agency masters of the state, reassured him.

The estimate of his own work, by one so little capable of impartial judgment as was Jackson, is, of course, not authoritative. Equally fallible are contemporary views of a man, respecting whom all ranged themselves as ardent friends or foes. It

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is now, however, a half century since Jackson set out from the White House on his return to the Hermitage — a period long enough to reveal, with considerable distinctness, the real scope and nature of his work, and to lessen, if not remove, early prepossessions.

Of the lives of Jackson, Parton's, written during the period just preceding the Civil War, and Professor Sumner's, published in 1882, are the best. We possess also, in Professor von Holst's *Constitutional History of the United States*, a very able discussion of Jackson's character and political work.

On the extent to which personal feeling became a factor in Jackson's policy and the mischief resulting therefrom; on the usurpations by which a nominally republican administration was transformed into the really despotic "reign" of one man; on Jackson's spirit and methods in the bank controversy, Sumner and von Holst are in substantial accord. They condemn without reserve. Parton, although lenient in particulars, reaches a similar verdict. Jackson's course towards nullification receives praise. Sumner, however, qualifies his approval as follows: "Nullification involved directly the power and prestige of the federal government, and he would certainly be a most exceptional person who, being President of the United States, would allow the government of which he was the head to be defied and insulted."[1] And later, commenting on the proclamation to the people of South Carolina: "He lives in popular memory and tradition chiefly as the man who put down this treason, but the historian must remember that, if Jackson had done his duty to Georgia and the Indians, nullification would never have attained any strength."[2] Parton holds the widely prevalent opinion that Jackson is responsible for the "spoils system" in national politics.[3] Sumner dissents. "It is a crude and incorrect notion," he says, "that Andrew Jackson corrupted the civil service. His administration is only the date at which a corrupt use of the spoils of the public service as a cement for party organization under the democratic-republican

[1] Sumner, Jackson, 219. [2] Sumner, Jackson, 283.
[3] Parton, Jackson, III., 692.

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self-government, having been perfected into a highly finished system in New York and Pennsylvania, was first employed in the federal arena."[1] Von Holst's views are similar. He thinks that Jackson, by vigorous resistance, could have put off the evil day. "But, by this means, only a short delay would have been gained. To prevent the evil, it was necessary to avert its causes, and to do this there was need of something more than a powerful will; a single person could assuredly not do it."[2]

We have been looking at single features and measures. What of the administration as a whole? Parton's view is as follows: "I must avow explicitly the belief that, notwithstanding the good done by General Jackson during his presidency, his elevation to power was a mistake on the part of the people of the United States. The good which he effected has not continued, while the evil which he began remains."[3] Sumner, in commenting on "Jackson's modes of action in his second term," says: "We must say of Jackson that he stumbled along through a magnificent career, now and then taking up a chance without really appreciating it; leaving behind him disturbed and discordant elements of good and ill just fit to produce turmoil and disaster in the future."[4] Later he adds: "Representative institutions are degraded on the Jacksonian theory just as they are on the divine-right theory, or on the theory of the democratic empire. There is not a worse perversion of the American system of government conceivable than to regard the President as the tribune of the people."[5] The view of von Holst may be inferred from the following passages: "In spite of the frightful influence, in the real sense of the expression, which he exercised during the eight years of his presidency, he neither pointed out nor opened new ways to his people by the superiority of his mind, but only dragged them more rapidly onward on the road they had long been travelling, by the demoniacal power of his will."[6] The meaning of the bank struggle is thus defined: "Its significance lay in the elements which made Jack-

[1] Sumner, Jackson, 147.
[2] Von Holst, II., 14.
[3] Parton, Jackson, 694.
[4] Sumner, Jackson, 279.
[5] Sumner, Jackson, 280.
[6] Von Holst, II., 30, 31.

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son able actually and successfully to assert his claims, in conflict both with the constitution and with the idea of republicanism, to a position between Congress and the people as patriarchal ruler of the republic."[1] Elsewhere he tells us that the "curse of Jackson's administration" is that it weakened respect for law; that "the first clear symptom" of "the decline of a healthy political spirit" was the election and re-election of Jackson to the presidency; that his administration paved a "broad path for the demoralizing transformation of the American democracy"; and that "his 'reign' receives the stamp which characterizes it, precisely from the fact that the politicians knew how to make his character, with its texture of brass, the battering-ram with which to break down the last ramparts which opposed their will."[2]

According to Parton, Sumner, and von Holst, as I understand them, the net result of Jackson's influence upon the American people was to hasten their progress toward political ruin. I think this conclusion erroneous. The gravest accusation against Jackson is, that his influence undermined respect for law. It is plausibly argued that, since he himself was impatient of authority, his example must have stimulated lawlessness in his followers. It may be urged, in reply, that the history of the country does not support the charge. The worst exhibitions of general lawlessness which have disgraced the United States were the anti-abolitionist mobs of Jackson's own day — for which he was not responsible. Since then, the American people, in spite of the demoralizations of the war and reconstruction periods, have steadily grown in obedience to law. The turbulence of un-Americanized immigrants, although it may hurt American reputation, is not an expression of American character. That we are essentially a law-abiding people, the contested presidential election of 1876 strongly testifies. Devotion to the state and obedience to formal law come, at times, into conflict. In such cases, obedience to law, if persisted in, would give us the civilization of Asia. Disregard of formal law, in order to serve the state more

[1] Von Holst, II., 67, 68.

[2] Von Holst, II., 149.

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efficiently, is a distinctive feature of European and American civilization. In this sense, Cæsar, Luther, Hampden, and Washington were law-breakers. Between these, and those who break the law for the sake of power or passion, or self-love in any form, the difference is world-wide. The acts of the former are recognitions of political duty; the acts of the latter are denials. In the Indian Wars and the War of 1812–14, strict deference to the inefficient management at Washington would have made success impossible. Jackson took matters into his own hands, and, in times when failure and chagrin were the order of the day, was brilliantly successful. If the people took note of the insubordination, they also took note of the patriotic motive which prompted it. The lessons of the camp he carried into civil life. He regarded himself as the highest representative of the entire people, commissioned by them to secure their welfare. The undoubted usurpations which followed were never recognized as such by Jackson. On the contrary, he believed himself the staunchest upholder of the constitution. And the people agreed with him. Unconscious violations of law may entail suffering, but they do not demoralize; they do not weaken respect for law.

Another charge is, that Jackson ruled his party through personal methods, and that he drew to his aid irresponsible counsellors. It is true: through the "kitchen cabinet" and the "Globe," he maintained a personal relationship with his followers not unlike that of a Highland chieftain to his clansmen two centuries ago. This relationship was unfavorable to the free exercise of individual judgment, and perhaps to self-respect. What went far, however, towards justifying it, was the undeveloped political character of many of Jackson's partisans. Personal politics were a necessity to them. Their choice lay between the stern drill of Jackson and the blandishments of the demagogue. The methods best adapted to the Whigs were out of the question. It is fair, in judging Jackson's course as a party leader, to remember that he worked with and for the lower strata of political society.

It is a curious circumstance that the relation of Jackson to

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sectionalism has received very little attention; and yet the growth of sectionalism, *i.e.*, the tendency to divide the Union into two portions, politically separate and independent, is the fact which, from the Missouri Compromise of 1820 to the ordinances of secession in 1860, gives our political history its distinctive character. The one important question concerning Jackson, as indeed concerning every public man during the forty years which precede the Civil War, is: What did he do towards saving the Union from sectionalism?

The first step towards an answer is to discriminate between state rights and sectionalism. State rights seek the widest extension of local self-government within state lines: sectionalism seeks political independence for a group of states. State sovereignty, so-called, is a perverted form of state rights. State sovereignty has, as a matter of fact, never existed. No state has ever presented the conditions which make real sovereignty practicable and desirable. We doubt whether any state has ever for a moment soberly wished to assume and maintain real sovereignty. A fancied state sovereignty has, from time to time, been invoked in order to extort concessions from the national government, as was done by South Carolina in 1832; or in order to effect a peaceful and apparently legal escape from the sovereignty of the United States to a new sovereignty in the process of creation, as was done by the Southern states in 1860 and 1861. But in neither case was the assumption and maintenance of real state sovereignty contemplated. It is true that states call themselves sovereign; but the word does not create the fact — sovereignty must first exist in the nature of things. State rights, apart from sectionalism, have never been a serious hindrance to the progress of national unity. The possibility of their becoming so lessens every day, because the interests which unite the states and the preponderance, physical and moral, of the Union as a whole over any one state, increase daily. Sectionalism, on the other hand, is, by its very nature, incipient disunion. The first strongly marked appearance of sectionalism was in New England, just before and during the War of 1812–14. At the close of the war, with the removal of

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grievances, it came suddenly to an end. The second appearance of sectionalism was due to divergence of interests and views between North and South, caused by the institution of slavery. In both cases sectionalism wore the mask of state rights, because in that way it could gain an appearance of legality while pursuing a course essentially revolutionary.

It is demonstrable, however, that sectionalism, particularly when based on slavery, is incompatible with state rights. Sectionalism, fully developed, means disunion; in the place of one united people it would create two or more hostile peoples with conflicting interests, and without natural boundaries. Wars and colossal armaments would follow, and in their train centralization, the destroyer of state rights and of local self-government in every form. Although our Civil War lasted but four years, it almost transformed the character of the government. The entire previous period since the administration of Washington had not effected so great a centralization. It is also demonstrable that Southern sectionalism, before reaching the point of attempted disunion, became hostile to state rights. The fugitive slave law of 1850, and the *Dred Scott* decision were affronts to the strongest sentiments which sustain state rights. The course of the South during the Kansas struggle was destructive of state rights. There could not be a more distinct violation of their essential principle than the attempt to establish slavery in a territory against the will of its inhabitants. Indeed, it was the treason of Southern sectionalism to state rights as well as to the Union that divided the democratic party in 1860. The resort to secession has a similar meaning. The election of Lincoln did not imperil state rights; but it did deprive slavery of the sympathizing, docile support of the general government — a support to which it had long been accustomed — and threw it back upon its unimpaired constitutional guaranties and the rights of the states. But these were not enough. Slavery could prosper only through the fostering care of a national government, and it was to secure this that the South seceded.

Jackson came before the country as a disciple of Jefferson,

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and therefore as a believer in state rights. There was, it is true, much in his temper and situation which favored centralization; nevertheless, he was an honest, though moderate and somewhat inconsistent Jeffersonian, and he won and retained the confidence of the state-rights element in the democratic party. Moreover, he identified himself with the newly enfranchised and poorer citizens just rising to political self-consciousness. In these ways, his following came to include a large majority of his fellow-citizens, and, what was of the utmost importance, by far the larger proportion of those whose political character and opinions were as yet plastic. Jackson's great contemporaries, Clay and Webster, could not reach these. Both were identified, through their party relations, with the higher classes, and both were disqualified through peculiar elements of character for popular leadership. In his tastes and intellectual sympathies, Clay was far removed from the "sons of toil." His skill in contriving compromises, although exerted for patriotic ends, did not impress the imagination of the people. Straightforward, blunt methods are their preference. There was something, too, in Clay's course as candidate for the presidency that seemed to hint at overcalculation, irresolution, and even timidity — qualities which, once suspected, are a fatal bar to the confidence of the populace. Webster never touched the popular heart. His almost matchless eloquence appealed most strongly to statesmen, jurists, and those classes whose culture and imagination enabled them to forecast the future and made them susceptible to grand ideas. The masses had a confused sense of Webster's greatness; but it did not win them. It served rather to emphasize the difference between him and themselves. Webster's devotion to national unity seemed, in great measure, to arise from a contemplation of the country's destined place in the world's history. It was the greatness yet to come that he beheld, and by which he was inspired. Jackson's interest in national unity, on the contrary, seemed to grow out of his regard for the people then living, his contemporaries. It was their will that he consulted, and their plaudits that he cared for. To the people, Webster's claims seemed based on

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his superiority to themselves; Jackson's, on his devotion to themselves. Their decision could not be doubtful. The result was that Jackson became, to a degree never realized by any other man in our history, the trusted leader and teacher of the masses. Of this relationship Sumner says: "Jackson came to power as the standard-bearer of a new upheaval of democracy and under a profession of new and fuller realization of the Jeffersonian democratic-republican principles."[1] Also: "One can easily discern in Jackson's popularity an element of instinct and personal recognition by the mass of the people. They felt: 'He is one of us,' 'He stands by us.'"[2] Very explicit on this point is von Holst: "Jackson was the man of the masses, because by his origin and his whole course of development, both inner and outer, he belonged to them."[3] Most felicitous is the statement of Jackson's political relation to the people: "The supporters of his policy were the instincts of the masses; the sum and substance of it, the satisfaction of those instincts."[4]

This intimate relation to the people, and this unparalleled power over the people, Jackson used to impress upon them his own love of the Union and his own hatred of sectionalism. The victory at New Orleans and the proclamation to the people of South Carolina in 1832 are the two facts which did most to reveal Jackson's personality, and they are altogether national facts. The one portrays him as the defender of the Nation against foreign enemies; the other, against sectionalism. His character was altogether national. It is easy to think of Calhoun as a southerner and a South Carolinian; but it would not be easy to think of Jackson as belonging to Tennessee or to the border states. The distribution of his support in the election of 1832 is instructive. New Hampshire, New York and Pennsylvania, as well as Tennessee, Georgia and Missouri, were Jackson's states. He was not looked upon as the representative of any particular section. His policy as President showed no trace of sectionalism. Its aim was

[1] Sumner, Jackson, 136.
[2] Sumner, Jackson, 138.
[3] Von Holst, II., 3.
[4] Von Holst, II., 31.

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the welfare of the masses irrespective of section. To him state lines had little meaning; sectional lines, absolutely none.

There is another way in which he rendered great though unconscious service to the cause of national unity: he made the government, hitherto an unmeaning abstraction, intelligible and attractive to the people. Bagehot says: "The best reason why monarchy is a strong government is that it is an intelligible government. The mass of mankind understand it, and they hardly anywhere in the world understand any other."[1]

The chief value, then, of Jackson's political career, was its educational effect. His strong conviction of the national character of the Union, his brave words and acts in behalf of the rights of the Union, sank deep into the hearts of followers and opponents. The fact of national unity grew more real and attractive through his definition and defence. It is, perhaps, not too much to say that it was Jackson who made "peaceable" secession impossible. The spirit of Jackson's administration as a whole, the acts through which he influenced most deeply and permanently the political character of the people, are in accord with his resistance to nullification. Their tendency was to *nationalize*.

The greatness of his service was hidden for a time. Sectionalism, under the influence of slavery and the agitation against slavery, developed rapidly in the North as well as in the South; but when the doubtful struggle began, it was in obedience to the teachings of Jackson that the Northern Democrats put aside their scruples against "coercion," and resolutely engaged in the war for the Union. Were it not for him, the issue of the conflict between '61 and '65 might well have been other than it was.

ANSON D. MORSE.

[1] Bagehot, English Constitution, 101.

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THE CONSTITUTION OF THE UNITED STATES IN CIVIL WAR.

THE culmination of the differences between the sections in a definite political act occurred at a moment when the government was in the hands of that party whose principles were most susceptible of adaptation to the policy of the secessionists. Though the direct question of state or national supremacy was not met in the platform of either of the great parties in 1860, all the traditions of the Democracy were on the side of a strictly limited central government. For many years, now, the accepted narcotic for quieting any nervousness caused by threats against state-rights had been the soothing formula: "Each government is sovereign within its sphere." The assertion in December of 1860 that South Carolina's "sphere" included the right to dissolve the Union, called for some decisive action in spherical delimitation.

President Buchanan had been with the extreme Democrats on the Territorial question. The rights and equality of all the states he had insisted on maintaining with the utmost care. But the demand that he should acknowledge what after all is only the logical conclusion of the state-rights doctrine, was more than he was prepared to accede to. His message, on the meeting of Congress in December, was a striking illustration of the difficulty with which all thoughtful Democrats were confronted by the action of South Carolina. Any such state-right as that of secession, he claimed, was "wholly inconsistent with the history as well as the character of the federal constitution"; and his argument in support of this view contained practically all that had ever been said on the subject. Still he was far from excluding the idea of a "sphere" by which the central government was limited. "This government," the President stated, "is a great and powerful government, invested with all the attributes of sovereignty over the special subjects

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to which its authority extends." Not one man in the United States, probably, would have denied that. The whole constitutional development of the country had proceeded upon exactly that doctrine. But the President did not penetrate to the root of the difficulty by explaining definitely how the scope of those special subjects was to be determined. He did indeed refer to the wisdom of "the fathers" in adopting the rule of strict construction of the constitution; but all the world knew the unsatisfactory nature of that formula. No better illustration of its uselessness was needed than the results that were derived in the message itself from the application of the principle in the present crisis.

After reaching the conclusion that there was no constitutional right in a state to secede, he next examined the position of the executive under the circumstances. Following an opinion of Attorney-General Black,[1] he concluded that existing laws did not empower him to bring force to bear to suppress insurrection in a state "where no judicial authority exists to issue process, and where there is no marshal to execute it, and where, even if there were such an officer, the entire population would constitute one solid combination to resist him." His conclusion itself was reached by an exceedingly strict construction of the law of 1795, in reference to calling out the militia.[2] Having thus disclaimed any power in himself to resort to arms, he put the question: "Has the constitution delegated to Congress the power to coerce a state into submission which is attempting to withdraw, or has actually withdrawn from the confederacy?" Not being able to discover such a power among those delegated to Congress in the constitution, and not considering it "necessary and proper for carrying into execution" the enumerated powers, the President could not answer the question in the affirmative. "Without descending to particulars," he said, "it may be safely asserted that the power to make war against a state is at variance with the whole spirit and intent of the constitution."

[1] McPherson, Rebellion, p. 51.
[2] U.S. Statutes at Large, I., 424.

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Such was the rather disheartening result of an examination of the situation from a strict-constructionist standpoint. A state had no right to secede, and the federal government had no right to prevent it from seceding. It was evident that if such were the true state of the case, a right must be evolved from somewhere to fill the vacuum. Much abuse has been heaped upon Mr. Buchanan as the originator of this constitutional paradox. Far from being responsible for it, however, he was only unfortunate in having to officially proclaim the disagreeable consequence of a long-established theory of governmental relations. The fixed form in which for years the doctrine of sovereignty had been enunciated by every department of the government was that referred to above. The relative force of federal and state action, when in conflict, was a question that had been sedulously avoided. Once only, in 1832, had the issue been fairly presented, but the result of the nullification controversy had given no conclusive answer. The Supreme Court had maintained an unbroken line of precedents on the double sovereignty basis.[1] It had asserted the supremacy of the federal laws, so far as they were within the powers granted or implied in the constitution, but it had admitted that many cases of dispute could arise in which the judiciary could not be called upon to give judgment. In such questions, of a political rather than a judicial character, the final authority as to the constitutionality of a given law was, by the doctrine of "spheres," undetermined. Though the ultra state-rights school of Calhoun had given a perfectly clear and definite solution to the problem, and Webster on the other hand had been equally explicit in his contradictory answer, it must be admitted that the general course of governmental action, and more important still, perhaps, the prevailing sentiment of the people as a whole, had followed the middle line of which the conservative Madison was a conspicuous adviser.

From this standpoint the only constitutional course in case of a conflict of the "sovereignties" was to deny that such a thing was possible, eulogize the constitution as the greatest

[1] Brightly's Federal Digest, p. 142.

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extant production of the human intellect, point out the dreadful consequences that would follow the recognition of supremacy in either claimant, and end by compromising the difficulty in such a way as to furnish precedents for both sides in the future. It would be erroneous to maintain that this method of action was as unprofitable as it was illogical. On the contrary, it was probably the only course that could have brought the United States intact through to the year eighteen hundred and sixty. But more than one of the Nation's true statesmen foresaw that it was only a question of time when "dodging the issue" would cease to give satisfaction as a principle of constitutional construction.

It was not understood by President Buchanan, or by the mass of the people, that the secession of South Carolina was the knell of the old principle. Mr. Buchanan promptly adopted the time-honored method of meeting the difficulty. His message eulogized the constitution, and affirmed the supremacy of the general government in its sphere; he referred with emphasis to the reservation of rights to the states, and recoiled with horror from the idea of using force to preserve the Union, even if the power to do so were conferred. To Congress was left the devising of measures necessary to the circumstances, the President's only recommendation being an explanatory amendment to the constitution. The amendment, he thought, should deal not with the fundamental question, but with the *status* of slavery, with a view to "forever terminate the existing dissensions, and restore peace and harmony among the states."[1]

The executive having thus failed to free itself from the shackles which precedent imposed, what did Congress effect in the way of meeting the emergency? In the House a special committee of one member from each state was appointed, to consider as much of the President's message as referred to the perilous state of the country. A special committee of thirteen was likewise appointed in the Senate. The most casual examination of the enormous mass of propositions submitted to

[1] McPherson, History of the Rebellion, p. 50.

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these committees, as well as to the Houses directly, will reveal the confidence that still remained in the "compromise" method of determining controversies, as well as the utter hopelessness of its successful application to the existing difficulty.[1]

The attention of Congress was directed chiefly to such measures as were embodied in the report of the House special committee, and in the resolutions proposed in the Senate by Crittenden of Kentucky. The Senate's special committee reported a failure to agree upon any general scheme of adjustment. The only proposition of the House committee's report that assumed the character of a law was that proposing an amendment to the constitution in these words: "No amendment shall be made to the constitution which will authorize or give to Congress the power to abolish or interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said state." This proposition secured the necessary two-thirds in both the House and the Senate, only the radical Republicans opposing it,[2] and was ratified by the legislatures of Ohio and Maryland before its uselessness was appreciated.

It was upon the Crittenden resolutions, in the Senate, that the friends of Union through conciliation based their final hopes. The plan was directed entirely to a settlement of the slavery question. It provided for constitutional amendments dividing all United States territory by the 36° 30′ line, and recognizing slavery south of the line, while prohibiting it north. States formed from this territory were to be admitted upon reaching a population requisite for a member of Congress, and were to make their own choice as to slavery in their constitutions. The power to abolish slavery within its jurisdiction was denied to Congress, if the places concerned should be within the limits of states permitting slavery. The interstate slave trade was put beyond the interference of Congress, and the United States was required to compensate any owner for a fugitive slave violently rescued from him, at the same time

[1] For digest of the propositions, see McPherson, Rebellion, p. 52 *et seq.*

[2] *Ibid.*, p. 59.

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having action to recover the amount from the county in which the rescue was effected. Such a scheme did not seem to offer much consolation to the Republicans, who had made it their cardinal principle that slavery was too horrible a thing to come under the express recognition and protection of a free government. The resolutions were opposed by the united front of the Republican senators, and finally, after the withdrawal of most of the Southern delegation, they were rejected, on the second of March, by a vote of 19 to 20.[1]

The Congress and the administration came to an end on the fourth of March, 1861. How did the constitutional question stand then? Had any advance been made toward an answer to the vexed question of sovereignty? The record sketched above tells the gloomy tale. An emasculated national sovereignty had been proclaimed by the executive; a vigorous state sovereignty had been actively asserted by seven of the commonwealths of the Union; and no position whatever had been assumed by the federal legislature.

I. *Principles of the Appeal to Arms.*

It would be misleading to pass without notice the idea of executive duty on which Mr. Buchanan based his action in reference to the forts and other property of the United States in the South. His denial of the right of secession precluded, of course, any recognition of the independence of the withdrawing states. Accordingly, a demand of the commissioners from South Carolina for the removal of a hostile military force from her soil was simply disregarded, and no admission was allowed of her claim of eminent domain. Attorney-General Black had advised the President, that "the right of the general government to preserve itself in its whole constitutional vigor by repelling a direct and positive aggression upon its property or its officers, cannot be denied."[2] The attitude of the administration was therefore manifested in its orders to the com-

[1] McPherson, Rebellion, p. 64.
[2] McPherson, Rebellion, p. 52.

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mander of Fort Sumter to stand strictly on the defensive, but to act vigorously if assailed.

In his personal defence, written after the war, Mr. Buchanan assigns as a reason for maintaining this position, that he was above all things desirous of avoiding bloodshed, and had high hopes of adjusting the difference by negotiation.[1] He had most convincing assurances that any aggressive action on his part would promptly lead to the withdrawal of several hesitating states; and, with the slender means at his disposition, he concluded that a preservation of the *status quo* was the most feasible as well as the most patriotic plan. It must be remembered, however, that Mr. Buchanan never abdicated the duty of administering justice and collecting the revenue in the seceded states. He declared his intention of performing these duties as soon as Congress should pass laws requisite to the novel circumstances. In case of action upon this line, armed collision with the state power would have resulted from the attempt to collect United States taxes. As a matter of fact, however, the opening of hostilities was precipitated on the issue of defending government property.

It will be profitable to determine as precisely as possible the theory of the constitution and governmental relations upon which the exercise of force by the new administration proceeded. Mr. Lincoln's inaugural address was extremely moderate in tone. He did not announce any policy distinguishable from that of his predecessor. Under the impulse of actual hostilities, however, the contempt of the President for the state-sovereignty doctrine assumed a decidedly aggressive form. His message to Congress at the opening of the special session on July 4 contained a severe denunciation of the dogma. The time had come for assuming a position that should at least be clear and intelligible; and the President planted himself unequivocally on the theory of national sovereignty. As his definition of a "sovereignty" he accepted this: "A political community without a political superior."

[1] Mr. Buchanan's Administration on the Eve of Rebellion, ch. ix.

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Tested by this [he said] no one of our states, except Texas, ever was a sovereignty. And even Texas gave up the character on coming into the Union. . . . The states have their *status* IN the Union, and they have no other legal *status*. . . . The Union is older than any of the states, and, in fact, it created them as states. Originally some dependent colonies made the Union, and, in turn, the Union threw off their old dependence for them, and made them states, such as they are. Not one of them ever had a state constitution independent of the Union.[1]

Such were the steps by which Lincoln reached his position of national supremacy. If a vote had been taken in 1861, in the Northern states alone, on the abstract constitutional question at issue, the President's view would in all probability have been defeated. But so skilfully were the theoretical assumptions blended with appeals to the Union sentiment of the people, that the whole doctrine enunciated in the message was accepted without discrimination. The same passion for territory which had made popular the extension of the boundaries to the Pacific, now clamored for the maintenance of the domain in its integrity. One theory of the constitution could not maintain it; the other could, and the other must be adopted.

The promptness of Congress in adopting measures for enabling the President to carry out his doctrine is sufficient evidence that the legislative department was one with the executive in his views of the constitution. The object of the war was the subject of numerous resolutions proposed in both houses. But the majority showed no disposition to discuss abstractions when actions would more clearly proclaim their opinions. Hence, but one formal declaration of intention came to a vote. This was a resolution to the effect that the war forced upon the country by the disunionists of the South was

not waged in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of those [the Southern] states, but to defend and maintain the supremacy of the constitution, and to preserve the Union with all the dignity, equality, and rights of the several states unimpaired.[2]

[1] McPherson, Rebellion, p. 127.
[2] McPherson, Rebellion, p. 286.

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It is beyond question that this declaration expressed the feelings of two-thirds of the Northern people at this time. The resolution, though not passed in joint form, was adopted by both House and Senate separately, with no substantial difference in the wording. In each case the vote was almost unanimous. On its face, the end of the war is proclaimed to be, not the overthrow of slavery, but the preservation of the Union. In respect to the dignity and rights of the states, the expression of intention is clearly inconclusive; for there were very widely varying views as to what was the extent of such dignity and rights under the supreme constitution. Were the rights to be preserved those that were claimed by the state-sovereignty politicians, or only such as were conceded by the centralizing school? All that appeared unmistakable was that some form of state organization was to be maintained when the rebellion was subdued.

But, even without any more definite declaration of Congress, it cannot be questioned that the doctrine of sovereignty enunciated by the President's message was the doctrine upon which the legislature planted itself for the struggle. Whatever may have been the defects of the theory, it certainly did not lack clearness and consistency. The Nation is sovereign; the states are local organizations subordinate to the Nation. The general government represents the Nation, and is limited in no way by the local state governments, but only by the federal constitution. Of this constitution, however, the departments of the central government are the final interpreters; the limitations of the constitution, therefore, are practically guarded only by the mutual responsibility of the departments in action, and by the accountability to the people in the elections.

II. *The War Power.*

The circumstances in which the government found itself after the fall of Sumter, were entirely unprecedented. The President was obliged to regard the uprising of the South as a simple insurrection; but the only parallel case, the Whiskey Insurrec-

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tion in Washington's administration, was so insignificant in comparison, that from the very beginning a system of original construction of the constitution had to be employed to meet the varied occasions for executive as well as legislative action. Long before the end of the war, the principles thus evolved had become so numerous and so far-reaching in their application, as to entirely overshadow the most cherished doctrines of the old system.

From the very outset the basis of the government's war power was held to be the necessity of preserving the Nation. The limit of its application was not the clear expressions of the organic law, but the forbearance of a distracted people. That this forbearance extended so far as it did, is significant. The "necessity" thus sanctioned was not the exigency of individual liberty that prompted the Declaration of Independence, but the mortal peril of a conscious nationality. For a third time in a hundred years, the conviction of a fact beat down the obstacles of established forms. The revolution of 1776 secured liberty; that of 1787 secured union; and that of 1861–67 secured the unity of the Nation. In each case traditional principles were felt to be incompatible with existing facts, and the old gave way to the new. The question presented to the administration by the commencement of hostilities was: "Has this government the power to preserve its authority over all its territory?" The answer of the old school of constitutional lawyers was: "Yes, so far as it is conferred by the constitution and the laws" — but the answer we derive from the actual conduct of the war is "Yes" without qualification.

Immediately upon the fall of Sumter, the assertion of the new doctrine began. Before the assembling of Congress, July 4, six distinct proclamations were issued by the President, calling into play forces deemed necessary to the preservation of the Nation. The calling out of the militia was based upon the law of 1795. Buchanan had declined to consider this law as applicable to the present circumstances. His delicacy, however, was a phase of his scruples about coercing a state — scruples entirely foreign to his successor. It is enacted by the law in question that

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whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the President of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed.[1]

Buchanan's interpretation of this was that the militia was to be employed only as a *posse comitatus* to assist in executing a judge's writ.[2] While this may have been the immediate idea of the framer, there was not the remotest allusion to such an intent in the law itself, and it was no extraordinary stretch of construction for Lincoln to act in accordance with the plain terms of the statute. His proclamation avoided any reference to the state governments. And the theory of mere individual uprising was rounded out by including the governors of the seceded states in his call for troops.

Four days after the call for volunteers, the President's purpose of ignoring the connection of the state governments with the rebellion was put to a severe test in his proclamation of a blockade of the ports of the cotton states. He was obliged to speak of "the pretended authority" of those states, but only to declare that persons under such authority molesting United States vessels would be treated as pirates. This assumption by the executive of the right to establish a blockade was rather startling to conservative minds. It seemed like a usurpation of the legislative power to declare war. For blockade is an incident of actual warfare, and involves the recognition of belligerent rights. The constitutionality of the President's action, however, was affirmed by the Supreme Court in the Prize Cases,[3] and hence, Congress having acquiesced, it has the sanction of all three departments of the government. Accordingly, the President, as commander-in-chief, can determine, without reference to Congress, the time when an insurrection has attained the pro-

[1] U. S. Statutes at Large, I., 424.
[2] Attorney-Gen. Black's opinion: McPherson, Rebellion, p. 51.
[3] 2 Black, 635.

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portions of a war, with all the consequences to person and property that such a decision entails.

A further action of the President previous to the meeting of Congress was the call for the enlistment of forty thousand volunteers, and the increase of the regular army by over twenty thousand men, and the navy by eighteen thousand. Mr. Lincoln himself doubted the constitutionality of these measures.

> Whether strictly legal or not [he says], they were ventured upon under what appeared to be a popular demand and a public necessity, trusting then as now that Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress.[1]

This frank substitution of a "popular demand" for a legal mandate, as a basis for executive action, is characteristic of the times. The President's course was approved and applauded. Howe, of Wisconsin, proclaimed in the Senate that he approved it in exact proportion to the extent to which it was a violation of the existing law.[2] The general concurrence in the avowed ignoring of the organic law emphasizes the completeness of the revolution which was in progress. The idea of a government limited by the written instructions of a past generation had already begun to grow dim in the smoke of battle.

The remaining subject dealt with in the President's proclamations, was the suspension of the writ of *habeas corpus*. Southern sympathy in Maryland had taken so demonstrative a form that summary measures of repression were resorted to by the government. General Scott was authorized by the President to suspend the writ of *habeas corpus* at any point on the military line between Philadelphia and Washington. This assertion by the executive of the absolute control of the civil rights of the individual in regions not in insurrection excited rather more criticism than the measures which would unpleasantly affect only the rebellious states. A case was promptly

[1] Message of July 4, 1861. McPherson, Rebellion, p. 126.
[2] Globe, 1st session, XXXVII. Congress, p. 393.

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brought before Chief Justice Taney for judicial interpretation. Justice Taney's opinion[1] took strong ground against the constitutionality of the President's act. The clause of the constitution touching the matter says: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."[2] The implication is that in the cases mentioned the privilege may be suspended, but the clause is silent as to who shall do it. Precedent and authority were certainly with the Chief Justice in regarding the determination of the necessity as a function of the legislature. But to have awaited the meeting and action of Congress in the present case might have been to sacrifice the government. Lincoln therefore availed himself of the latitude of construction possible by the wording of the clause. Attorney-General Bates sustained the President in an elaborate opinion. His ground was that in pursuance of his obligation to execute the laws, the President must be accorded the widest discretion as to means. The use of military force to suppress insurrection was authorized by the constitution, and when such means had been determined upon by the executive, all the incidents of warlike action must necessarily be included. Nor could the judicial department, being a co-ordinate, and not a superior branch of the government, interfere.[3] The position of the executive in this matter was entirely consistent with that assumed in the establishment of the blockade. Granting the right in the President to decide when war has technically begun, both the powers in question spring naturally from the recognized authority of the commander-in-chief. In the interval between April 12 and July 4, 1861, a new principle thus appeared in the constitutional system of the United States, namely, that of a temporary dictatorship. All the powers of government were virtually concentrated in a single department, and that the department whose energies were directed by the will of a single man.

[1] McPherson, Rebellion, p. 155.

[2] Art 1, sec. 9, clause 2.

[3] For the opinion, see McPherson, Rebellion, p. 158.

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The dictatorial position assumed by the President was effective in the accomplishment of two most important results, namely, the preservation of the capital and the maintenance of Union sentiment in the wavering border states. These ends achieved, the administration of the government fell back once more into the old lines of departmental co-ordination. Congress labored with the utmost energy to fill the gaps which the crisis had revealed in the laws. Small heed was given to the demands of the minority for discussion of the great constitutional questions that constantly appeared. The decisive majorities[1] by which the Republicans controlled both houses enabled work to be transacted with great vigor.

The first imperative duty of the legislature was to provide for defining the nature and extent of the insurrection which the President reported as existing. It has been shown how the executive had declined to recognize the state organizations as elements of the uprising against the general government. Congress necessarily adopted the same policy. Its measures were made to refer primarily to combinations of individuals against the laws of the United States. But in the act of July 13, 1861, section five, the attitude of the state governments toward such combinations was taken into consideration as a means of determining the location and extent of the insurrection. In this section the obligation upon the state authorities to support the laws of the United States was distinctly assumed, and the refusal to fulfil this obligation was made sufficient ground for proclaiming all the inhabitants of the delinquent community public enemies. The law in question, commonly called the "non-intercourse act,"[2] re-enacted the main features of the law by which President Jackson was empowered to collect the duties in nullification times; the fifth section provided further, that when the militia should have been called forth by the President to suppress the insurrection,

[1] Practically 28 in a Senate of 50, and 92 in a House of 178. See Tribune Almanac for 1862, pp. 17 and 19.

[2] Public Acts of the XXXVII. Congress, 1st sess., ch. iii.

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and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any state or states, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such state or states, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said state or states, then and in such case it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such state, or any section or part thereof, where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such hostility shall continue.

A proclamation in pursuance of the authority thus granted was issued by the President on August 16. From that time the condition of territorial civil war legally and constitutionally existed in the United States, with all the consequences of such a condition which the law of nations recognizes. Congress had exercised its power to declare war, or, what has been admitted to be the same thing, to recognize a state of war as existing. From the time of such recognition, the acts of the President involving technical war powers were unquestionably in accordance with the constitution.

Upon the passage of the "non-intercourse act," both political departments of the government had given their recognition to the fact that all the inhabitants of certain portions of United States territory were at war with the government and its loyal supporters. The duty of each department thereupon was to use all constitutional means to overcome in the shortest time possible the resistance to their authority. To what extent a strict interpretation of the organic law would reveal adequate powers, was a question; but the spirit of the people and general ideas of necessity were convenient sources of authority that never failed of application when the direct mandate of written law was insufficient. A question that arose immediately was in reference to personal and property rights of dwellers in the insurrectionary districts. Such persons were still, in the theory of the government, citizens of the United States; but were

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they, as such, entitled, under the present circumstances, to the protection of their civil rights which is normally secured by our system?

War is the negation of civil rights. Granting the power in Congress to recognize certain of its citizens as public enemies in the technical sense, the exercise of that power puts in the hands of the government a control over the life, liberty and property of all whom it so regards, limited only by the dictates of humanity and a respect for the practice of nations. The insurgents become, in short, belligerent enemies, with the rights and duties which international law ascribes to such. From the moment that they assume that character the constitutional guarantees of civil liberty lose their effect as against the executive. It becomes authorized to enforce submission to the laws by bullets, not by indictments. "Due process of law" ceases to be the necessary condition to a deprivation of civil rights. All the safeguards so carefully constructed by the constitution for the protection of United States citizens against oppression by their officers and legislators disappear when resistance by those citizens to law becomes so formidable as to be deemed war.

Such was the theory upon which the exercise of the war power was based by all three departments of the government. The Supreme Court, though divided, in the Prize Cases, upon the question of the exact time when the attitude of belligerency could be assumed, was unanimous in respect to the consequences after that time had arrived. Justice Nelson, dissenting, said:

> There is no doubt the government may, by the competent power, recognize or declare the existence of a state of civil war, which will draw after it all the consequences and rights of war between the contending parties, as in the case of a public war. . . . The laws of war, whether the war be civil or *inter gentes*, convert every citizen of the hostile state into a public enemy.[1]

At the outbreak of the insurrection, then, two distinct courses lay open for the government to pursue. It could

[1] 2 Black, pp. 688, 693.

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elect to repress the uprising by the civil power, through process of the courts, with the military arm as the marshal's *posse;* the insurgents then would be subject to treatment like ordinary criminals. Or, on the other hand, the rebels could be recognized as belligerents and subdued by the exertion of military power alone. In the latter case, the insurgents would seem to be entitled to the treatment which public law secures to armed public enemies. But the question early arose, could not the government follow both courses at the same time, and be guided in its dealings with the rebels by international or by constitutional law, at its discretion? Could it not, for example, hang as traitors rebels taken in battle as prisoners of war? A practical application of some principle was early called for. In the fall of 1861 the crew of the Confederate privateer *Savannah* were brought as captives to New York, and were convicted of piracy. The proceeding was in accordance with Mr. Lincoln's blockade proclamation, which ended with a declaration that rebels molesting United States vessels, should be thus dealt with. But the penalty was never enforced against the prisoners, for the reason that Mr. Davis announced his intention to visit exactly the same treatment that was accorded them, upon an equal number of prisoners in his hands.[1]

The course of the administration in reference to the exchange of prisoners and other matters was dictated by the same reasoning. It was desired to secure all the advantages which flowed from the exercise of the war power by the government, while not conceding belligerent rights to those against whom that power was employed. There was a strong political element which maintained that the recognition of the rebels as belligerents would be equivalent to acknowledging their independence. It was on this doctrine that Thaddeus Stevens later built his conquered-province theory in respect to the status of the Southern states at the close of the war. But the developments of the conflict led to the working out of a policy, which, without attributing official recognition to the Confederate government, sanctioned the doctrine that, as regarded individuals

[1] Annual Cyclopedia for 1861, pp. 585, 591.

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in the insurrectionary districts, the United States government had the rights of both sovereign and belligerent. This idea was wrought out most distinctly in the measures adopted for the confiscation of property in the rebel states.

The first step taken by Congress in this direction was the act of Aug. 6, 1861.[1] It made it the duty of the President to seize, confiscate and condemn all property used in aiding, abetting or promoting the present or any future insurrection against the government of the United States. Section four provided for the forfeiture of slaves employed in any military or naval service against the government and authority of the United States. This act was passed by virtue of the war powers of Congress. It was a legislative authorization for the exercise of an acknowledged belligerent right. For the purpose of freeing the slaves, the ultra anti-slavery men were perfectly willing to sacrifice their old scruples about regarding men as property, and the provision was defended on the same ground as the rest of the bill.

This first act was somewhat crude and unsatisfactory in detail, but was in principle quite definite and distinct. War had been recognized as existing, and Congress had exercised the constitutional power of making "rules concerning captures on land and water." But during the next session of the thirty-seventh Congress, the full development of the war gave rise to a more bitter spirit, which manifested itself in more radical and questionable measures. Many propositions looking to confiscation and emancipation were brought forward in both houses, and the debates upon these subjects were long and acrid. The dominant party became quite distinctly divided on the general policy of the war; and, back of all, the idea of finding in the existing crisis a definite settlement of the slavery question assumed a steadily increasing importance.

It had been determined that the crimes of the secessionists called for vindictive punishment, but serious constitutional difficulties were found to beset the path of the avengers. The House first passed a bill which surmounted all obstacles with

[1] Public Acts of the XXXVII. Congress, 1st. sess., ch. lx.

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gratifying ease. It simply provided that all property of whatever description, belonging to certain described classes of persons, was forfeited to the government of the United States, and declared lawful subject of seizure, and of condemnation. The judiciary committee of the Senate, to whom this and other bills were referred, recognized some of the objections that could be raised to the House proposition, and so reported a modification of it. By this it was enacted that the forfeiture should take effect only upon the property of persons "beyond the jurisdiction of the United States," or of persons in any state or district of the United States where, on account of insurrection or rebellion, the ordinary judicial process could not be served upon them, whenever such persons should be found in arms against the United States, or abetting the existing rebellion; and the title to the property was to vest in the United States immediately upon the commission of the act, so that any subsequent alienation by the former owner would be void.

Each of these bills assumed the power in Congress to deprive several millions of persons of all their property, and this by simple legislative act. By the theory of our constitution, such power must be granted by the organic law, or be inferable from some clearly granted power. There was no claim of an express grant. By implication, the power was held to be deducible from the clauses authorizing Congress "to declare war," "to make rules concerning captures on land and water," "to provide for calling forth the militia to . . . suppress insurrections," and finally, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." On the other hand, the constitution contains the following prohibitions: "No bill of attainder . . . shall be passed;" "no person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use without just compensation;" and finally, "no attainder of treason shall work . . . forfeiture except during the life of the person attainted." The exercise of authority under the grants above enumerated involved of necessity the violation of the above prohibitions. Respect for both at the same time was inconceivable. The

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only escape from the dilemma was to assume that the constitution contemplated a state of affairs to which the prohibitions were inapplicable. And that indeed was the position taken by the advocates of confiscation. The existence of a state of war was held to bring into the sphere of legislative action any measures necessary to weaken the enemy that were recognized by the great system of international practice. But modern international practice does not favor the general confiscation of enemies' private property.

The strong objections presented, on principles of both constitutional and international law, sealed the fate of both bills. The whole matter was finally referred back to the Senate judiciary committee and a compromise bill was patched up from the many propositions that had been submitted during the long debate. This last bill, with slight alterations, together with an explanatory resolution, framed to overcome certain constitutional scruples of the President, became at last the law.[1] The first four sections fixed very severe penalties for the crimes of treason and rebellion, the latter being an addition to the catalogue of felonies. These were taken from the suggestions of the more conservative Republicans, like Collamer, of Vermont, who expressed a strong desire to get at the property of the rebels, but insisted upon doing it by regular judicial procedure.[2]

Sections five, six, seven and eight, referred to confiscation proper. The President was directed to cause the seizure of all the property, of whatsoever kind, belonging to specified classes of persons, namely, officers of the rebel army or navy, officers of the civil administration of the so-called Confederate States, governors, judges, or legislators of any of said states, ex-officials of the United States hereafter holding office under the Confederate States, and persons owning property in loyal states who should give aid and comfort to the rebellion. Further, if any other person, being engaged in the rebellion, or giving it aid and comfort, should not cease within sixty days of a proclamation to be issued by the President, such person's property should be liable

[1] Public Acts of the XXXVII. Congress, 2d sess., ch. cxcv.
[2] Globe, 2d sess., XXXVII. Cong., p. 1812.

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to seizure in like manner. The property so seized was to be proceeded against by action *in rem* in the United States court, and condemned and sold as enemies' property, and the proceeds were to be used for the support of the army of the United States.

As an abstract right of war, such condemnation of private property was unquestionably in the power of Congress. Civilized nations, however, have generally recognized the expediency of a different policy. Real estate is in general left to its owners, and movables are appropriated only so far as military necessity, as judged by the commander in the field, seems to demand it.[1] Some vague idea of such a justification seems to have suggested the clause devoting the proceeds of the confiscations to the support of the army. But it was rightly argued that the determination of the army's necessities was a function of the President, and not of Congress, and that legislation in such a case was superfluous.[2] It appeared, however, from further developments, that the act was not based upon the war power alone. After it had been sent to the President for approval, it became known that he proposed to veto it. His objections were ascertained, and an explanatory resolution was hurriedly adopted to meet his views.[3]

Its most important provision was that the punishment and proceedings under the act should not "be so construed as to work a forfeiture of the real estate of the offender beyond his natural life." This was an effort to reconcile the act to the prohibition in the constitution against forfeiture for treason; the futility of the effort appeared from the fact that the forfeiture effected by the act was in no sense the result of an attainder of treason. Granting the power of Congress to devise an extra-constitutional method of depriving a man of his property, it was folly to regard constitutional limitations in applying the device. Attainder of treason does not result from a proceeding *in rem*, but from conviction in a criminal proceeding *in personam*.[4] The

[1] Halleck, International Law, pp. 456, 457, and authorities cited.
[2] *Cf.* Lincoln's message, McPherson, Rebellion, p. 198.
[3] Public Resolutions, 2d sess., XXXVII. Cong., no. 63.
[4] Cooley, Constitutional Limitations, p. 317.

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effect of the resolution, therefore, was simply to impair the utility of the act, while in no way affecting the constitutional question.

Again, the idea that an action *in rem* is such "due process of law" as the constitution contemplates in the deprivation of property, is wholly contrary to the spirit of the bill of rights. The theory of the action *in rem* is that the "thing" is an instrument, a necessary participant, as it were, in the violation of some law. The provision of the constitution refers to criminal procedure against the person. No such distortion of the organic law is necessary. Any attempt to reconcile the act with the guarantee of civil rights leads to absurdities. Such was the consistent position taken by the radical advocates of confiscation, and such is the only position justified by the logic of facts.

But very important results are secured by pursuing further the line of argument adopted by the radicals. The benefits of the constitution must be denied to those who refuse to recognize its authority. Such denial, however, does not relieve the offenders of their responsibilities under the fundamental law. Circumstances may force the government to regard certain citizens of the United States as enemies engaged in war. In such a state of affairs, many provisions of the constitution become inoperative. In other words, since the government itself is the judge of the circumstances, the government may suspend certain parts of the organic law. But not only that. The suspension of the constitution is not absolute. While the right of jury trial, for example, *may* be denied under the authority of Congress, it may also be allowed. A man's property may be seized by virtue of the war power, but at the same time the man himself may be tried and hung for treason under the regular civil procedure. "We may treat them [the rebels] as traitors, and we may treat them as enemies," said Trumbull, "and we have the right of both belligerent and sovereign, so far as they are concerned."[1] Such is undoubtedly the theory to be deduced from all the circumstances of the government's action in reference to confiscation. Con-

[1] Globe, 2d sess., XXXVII. Cong., p. 943.

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gress strove to work on the line of absolute power; the President clung to the idea that constitutional restrictions must be respected. An incomprehensible compromise was the result.[1]

Sections 9–12 of the confiscation act had reference to negroes. Slaves of persons engaged in rebellion against the government of the United States, coming into the lines of the army, or captured from their masters, or found in places once occupied by rebel forces, were declared free. Fugitive slaves were not to be given up except upon the claimant's making oath that the owner had not borne arms against the United States in the present rebellion, or given aid and comfort thereto. The President was authorized to employ negroes in suppressing the rebellion, and also to make provision for the colonization of the freedmen in some foreign country.

The treatment of the negro question was freely admitted by all the friends of the confiscation bill to be a very important, and by some to be the most important feature of the act. Vexatious complications had arisen in disposing of the fugitive slaves that could not be kept from coming within the lines of the army. The President's patience had been severely tried in his efforts to restrain the ardent abolition spirit of some of his generals.[2] While he looked forward to the possibility of a situation in which military necessity would justify emancipation, yet he considered the political horizon, especially in the border states, too threatening to permit precipitate action. But the radicals in his party denounced his hesitation as pusillanimous, and were only too ready to attain their end through the legislative department. Confiscation seemed an easy and suitable path by which to penetrate the stronghold of slavery. By the act of August 6, 1861, slaves used for the purposes of the insurrection had been declared free. The principle was that, under such circumstances, slaves were contraband of war. But the basis of the later law was the right to free a man's slaves as a

[1] As illustrating the struggles of the courts in construing the act, see decisions of District Judges Betts and Underwood, and others, collected in the Annual Cyclopedia for 1862–64, under the title "Confiscation."

[2] Especially Fremont and Hunter. See McPherson, Rebellion, pp. 247, 251.

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penalty for the master's participation in the rebellion. There was no essential distinction between the right of Congress to confiscate *choses in action*, and its right to take from the rebel his claim to the services of a negro. The institution of slavery was not touched, and the peculiar significance of these provisions lay in the fact that they were dictated by a sentiment in the North that would not long be satisfied with such moderate measures.

By the confiscation act and the discussions incident to its consideration, the attitude and powers of the United States government toward such of its citizens as were proclaimed public enemies were more or less satisfactorily determined. It was in connection with the civil rights of citizens not in rebellion, however, that the most radical modifications of the *ante bellum* constitution were effected, and the most far-reaching conception of the war power was attained. The question as to the extent of the government's authority over the life, liberty and property of the individual in states not in insurrection was complicated by the controversy over the proper department for exercising such authority. It has already been stated[1] that the action of the President in suspending the writ of *habeas corpus* of his own accord in 1861 had excited a discussion of his power to do it, and that Chief Justice Taney had given an opinion against the right. The impotency of the judiciary as against the executive, and the neglect of Congress to take any action on the matter, had left the administration in a position to realize its own ideas of its powers. By degrees, the suspension ordered by the President in April and May of 1861 had been extended all over the country. Arrests of disaffected persons and Southern sympathizers under secret orders from Washington had gone on without ceasing, and in no case was the service of the great writ allowed. Not only in Maryland, and the regions near the seat of war, but in the most distant parts of the land, from Maine to California, men were seized without any information as to the charge against them, and confined in forts and prison camps. It was

[1] *Supra*, pp. 174, 175.

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not denied by the friends of the policy that frightful injustice was often done, but that fact was rightly held to have no bearing on the question of power involved. If the constitution of the United States vested in the executive, in time of war, absolute discretion as to the means to be employed to carry on the war, whatever evils resulted from the exercise of this discretion must only be added to the aggregate of misery of which a resort to arms is the cause, and so must be regretted, but sternly endured.

The constitutional law of the case embraces two considerations: first, the President's right to arrest an individual, and second, the right to hold the prisoner. On September 24, 1862, a proclamation was issued from Washington, ordering, first, that as a necessary measure for suppressing the existing insurrection, all persons "discouraging volunteer enlistments, resisting military drafts, or guilty of any disloyal practice affording aid and comfort to the rebellion," should be subject to martial law, and liable to trial by courts-martial or military commissions; and second, that the writ of *habeas corpus* should be suspended in respect to all persons arrested or held by military authority. The basis of so extraordinary a proclamation is to be found in the apparently unimportant phrase with which the orders are introduced. The whole proceeding is "a necessary measure" of war. Granting that the oath to "protect and defend the constitution," and the mandate to "take care that the laws be faithfully executed," confer unlimited discretion as to means, nothing can be said against the legality of the President's orders. But on any other theory, it would be hard to justify them. The fourth article of the amendments to the constitution guarantees the security of the people, in their persons, against unreasonable seizures, and indicates that arrests are to be made through special warrants. On the theory under which the President acted in ordering arrests by military authority, this article of the constitution has no application to times of civil war.[1] It "speaks in reference to the normal condition of the

[1] Binney on the Habeas Corpus, p. 55; Whiting, War Powers under the Constitution, p. 176.

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country only." When war exists, the President has the right to arrest and detain on his own motion.[1] So the fifth amendment, also, which forbids the holding of any one unless on action of a grand jury, loses its force under such circumstances.

The second part of the proclamation was essential to the efficiency of the first. Together, they constituted a perfect platform for a military despotism. When, in the course of the year 1862, the growing prominence of the emancipation policy had dampened the enthusiasm of the masses, and drafts became necessary to meet the demands for troops, the opposition to the government grew so pronounced that military arrests became exceedingly frequent. The people took alarm, and in the congressional and state elections of 1862, the results were disastrous to the dominant party. Some action by the legislature then became imperative. Bills touching the subject were promptly taken up, but the discussions were so violent that the great law was not passed till the close of the session.

The interpretation of the clause of the constitution relating to the suspension of the writ of *habeas corpus*, was not, however, definitely decided. It was admitted on all sides that the general impression, from the foundation of the government, had been that the power of suspension was in Congress. The insertion of the clause in the article relating to Congress indicates that such was the idea of the committee on style and revision in the Convention. As first presented to the Convention and referred to the committee of detail, the clause contained the words "by the legislature."[2] Tucker's Blackstone and Story's commentaries assume without discussion that Congress alone can suspend the writ. The Supreme Court indicated such an opinion in Bollman and Swartwout.[3] And especially significant of the early idea is the fact that when, in 1807, a bill was proposed suspending the writ in connection with Burr's conspiracy, a long and violent debate in the House disclosed not the slightest intimation that any one suspected that the power was in the President.[4] The administration, however, had been justified by

[1] Binney, p. 6. [2] Elliot's Debates, V. 445. [3] 4 Cranch, 75.
[4] Annals of Congress, 2d sess. IX. Cong., p. 402 *et seq.*

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opinions from eminent lawyers, and officially by that of the Attorney-General. The grounds on which these views were based were generally technical rather than historical, and arguments were deduced from the circumstances and necessities of the present rather than from respect for the past.

Congress devoted itself to a course of procedure based upon a recognition of matters as they stood. The act of March 3, 1863,[1] first authorized the President, during the rebellion, to suspend the privilege of the great writ "in any case throughout the United States, or any part thereof." It then provided for the discharge of such persons as were in duress, upon failure of the grand jury to indict them, and for the judicial examination within twenty days of all persons hereafter arrested under orders of the administration. To check the torrent of prosecutions for malicious imprisonment that was threatening United States officers everywhere, it was enacted that the order of the President should be a sufficient defence in any such action. In other words, Congress declined to say whether or not the administration had acted illegally, but went so far as to protect it from any consequences if it had so acted. Provision was also made for the removal of all actions arising out of acts done under executive authority, from the state to the federal courts.

So far as concerned the past course of the administration, Congress undoubtedly took the wisest steps possible under the circumstances. Indemnifying the executive officers against suits for damages was a concession to the view that the President was correct in assuming the right to arrest and hold suspected persons; while the authorization to suspend the writ indicated that the power to suspend was in Congress. The only constitutional principle that can be deduced from the act as a whole is that the President may in an emergency exercise the right to arrest and detain individuals until Congress acts.

In pursuance of the authority of this act, Mr. Lincoln proclaimed a general suspension of the privilege of the writ of *habeas corpus* on September 15, 1863. The effect of the suspension was limited to persons held as "prisoners of war, spies, or

[1] Public Acts, 3d sess. XXXVII. Cong., ch. lxxxi.

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aiders or abettors of the enemy," and such as were amenable to the Articles of War. How elastic these limits were may be judged by the interpretation put upon "aiders and abettors."

> He is a public enemy who seeks falsely to exalt the motives, character and capacity of armed traitors, to magnify their resources, *etc.* He who overrates the success . . . of our adversaries, or underrates our own, and he who seeks false causes of complaint against the officers of our government, or inflames party spirit among ourselves, gives to the enemy that moral support which is more valuable to them than regiments of soldiers, or millions of dollars.[1]

With such perfect facilities afforded by law, it is scarcely to be wondered at that in many cases the practical construction of the proclamation was the arrest of anybody who expressed dissatisfaction with the administration. The boundary line between political opposition to the President and treason became extremely hazy in the eyes of the President's agents.

In addition to the free exercise of the right to arbitrarily arrest and hold citizens by military authority, the practice grew up, early in the war, of bringing arrested persons before military commissions and passing sentence upon them after summary proceedings of a quasi-judicial character. By the President's proclamation of September 24, 1862, all rebels and insurgents, and their aiders and abettors, and all disloyal persons generally, were declared subject to trial by court-martial or military commission. The latter organization had no legal existence in the United States when the President thus conferred jurisdiction upon it. Its actual power, however, became unmistakably manifest. It is to be noticed that with the recognition of the military commission, a complete judicial system existed outside of the ordinary civil and criminal courts. The whole process of arresting, trying, convicting and executing a man could be carried through without any recourse to the constitutional judiciary, and with no security whatever against the arbitrary will of the military commander. Such a state of things was held to be the necessary consequence of a rebellion which called for the exercise of the war power.

[1] Whiting, War Powers, p. 197.

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The *habeas corpus* act of 1863 provided for the trial of all political prisoners by the civil authority, and thus seemed to cut off from the military courts the jurisdiction over civilians. But in spite of this the application of martial law continued in all the Northern states. Efforts to secure a judgment of the civil judiciary upon the validity of the extraordinary tribunals all proved ineffectual till after the war had ended. Then, in 1866, in the case of *ex parte* Milligan,[1] the Supreme Court determined their relation to the constitution.

According to United States army orders, the military commissions were to administer the "common law of war," or, in other words, to execute martial, as distinct from military, law.[2] In assuming the right to try citizens of loyal states by purely military procedure, Mr. Lincoln asserted the existence of martial law, in its most unlimited sense, throughout the whole United States. Martial law is well understood to be practically no law — merely the unregulated will of a military commander, sanctioned by physical force.[3] Under its sway the whole machinery of civil justice disappears. The exigencies of active warfare bring the theatre of actual army operations into this condition by the very nature of the case. But the question raised by the President's action was whether there could be a constructive exigency of this sort — whether martial law could supersede civil law, not by the actual presence of contending forces and the actual destruction of the civil administration, but by the opinion of either the President or Congress that the necessity existed which would justify the supersession. It cannot be denied that the war was carried through on the latter theory. The records of the war department contain the reports of hundreds of trials by military commissions, with punishments varying from light fines to banishment and death.[4] Congress, moreover, asserted its control over the subject by indemnifying officers against prosecutions for acts done under

[1] 4 Wall., 2.

[2] *Ex parte* Vallandigham, 1 Wall., 249; *ex parte* Milligan, 4 Wall., 142.

[3] See Garfield's argument, 4 Wall., 47.

[4] Digest of Opinions of the Judge Advocate General, p. 334.

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the President's orders organizing the commissions.[1] It further gave legal sanction to the military tribunals in the reconstruction acts, though here there was a doubt as to whether the status of the region was that of peace or of war.[2]

But the judgment of the Supreme Court in Milligan's case was a clear and explicit denial of any power in either executive or legislative department to suspend the operation of the laws protecting civil liberty. In the first place it was held that the suspension of the privilege of the writ of *habeas corpus* did not establish martial law, as had been claimed by the executive. That act merely shuts off for the time civil inquiry into the reasons for military arrests. As to the main question, the government claimed:

> When war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the executive, substitute military force for and to the exclusion of the laws, and punish all persons as he thinks right and proper, without fixed or certain rules.

The necessities of the service, it was argued, required the division of loyal states into military districts, and this, in a military sense, constituted them the theatre of military operations. This conclusion the court flatly rejected, and sought some palpable objective fact that should alone justify the existence of arbitrary rule. This was found in the condition of the courts of justice.

> Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration. . . . Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction.

The safeguards thrown about the liberty of the individual by the constitution could be disturbed by neither President, nor Congress, nor the judiciary, except so far as concerned the writ of *habeas corpus*. Physical force alone could override the organic law.

[1] Act of May 11, 1866.

[2] See opinion of Attorney-General Hoar: McPherson, Reconstruction, p. 477.

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The opinion of the court was dissented from by four of the justices, on a single point, namely, the denial of the power in Congress to declare martial law. That this power was in the legislature, though not exercised during the war, was deduced from the authorization to make rules for the army and navy, in connection with the exception in the fifth amendment, of "cases arising in the land and naval forces, or in the militia in actual service in time of war or public danger." [1]

The action of the political departments is in direct contradiction of the judiciary on this vital question of the war power. The whole subject of extraordinary authority is involved in the determination of such a case as that of Milligan. To maintain that the framers of the constitution contemplated vesting in any man or body of men the discretionary right to set aside any of its provisions, seems too much like judging the past in the light of the present. To believe that the Nation could have been preserved without the exercise of such a discretionary power involves too severe a strain upon the reasoning faculties of the careful student of the times. Two methods may be suggested of reaching a satisfactory conclusion on the question; either to consider that the war wrought a great modification in the canons of interpretation applicable to the organic law, or to recognize the fact that in the throes of the rebellion a new and adequate constitution developed out of the ruins of the old.

In a conflict like the Civil War, it was inevitable that the balance of powers supposed to have been realized by the convention of 1789, should be seriously disturbed. Under the overpowering influence of circumstances, the distinction between executive and legislative functions became very uncertain. The doctrine, severely denounced by the court in the Milligan case, of a "necessity" that could override all constitutional restrictions, left both Congress and the President without fixed bounds to their respective powers. To Congress was ascribed the right to make any enactments that should tend to weaken the enemy. In the President, by virtue of his authority as commander-in-chief, were vested the

[1] 4 Wall., 137.

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unlimited powers of martial law. On the supposition that his will was supreme wherever troops were stationed,[1] the presence of recruiting camps and draft offices in all parts of the country justified the assertion of the President's independence of Congress's legislation. So while the legislature was endowed with unlimited power to make laws, the executive was endowed with unlimited power to disregard them.

This paradoxical conclusion was the consequence of a palpable perversion in the conception of "military necessity." As known to the rules of war this term has no application whatever to the reign of law. It only describes the subjective motive on which an officer acts in adopting measures for the safety of an organized force, or for the success of its operations in the field when civil law is overthrown. To derive from such a principle unlimited authority for a legislative body exercising delegated powers was logical absurdity. The true principle on which alone Congress could justify extra-constitutional legislation is expressed in that confessedly revolutionary maxim — *salus populi suprema est lex.*

But, besides the confusion which arose between the legislative and the true military "necessity," a further misconception appeared in regard to the effect of existing war on the President's civil authority. On the correct understanding of the executive's war power, it can attach only to his office as commander of the army. No effect whatever can result in the performance of his civil duties. As chief civil executive his actions relate to the laws of Congress; as chief officer of the army and navy, he is concerned with situations where there is no law. Questions of policy affecting the regions where law and order prevail are no more in his power to determine in time of war than in time of absolute peace.[2] Yet it was urgently insisted in 1862 that a state of hostilities effected the immediate absorption of the President by the commander-in-chief. A striking evidence of the confusion on this point is the fact that the Emancipation Proclamation was countersigned, not by the Sec-

[1] Whiting, War Powers, p. 201.
[2] Brown *vs.* U. S., 8 Cranch, 129.

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retary of War, but by Wm. H. Seward, Secretary of State. There seemed to be some idea that this military order was endowed with extraordinary authority by the endorsement of the civil branch of the administration.

In view of the position which the institution of slavery had occupied in the political history of the United States, it is unnecessary to make an elaborate argument to prove that any measures affecting the institution would fall under the designation of questions of policy. The social system which had occasioned the exciting struggle of 1820, which had kindled the flames that raged with slight intermission from 1835 to 1860 and culminated in the explosion of 1861 — that system certainly demanded now, as it had always heretofore received, a treatment determined by legislative deliberation rather than by arbitrary executive will. But "military necessity" had proved so potent a force already that the anti-slavery partisans insisted on applying it to their purposes.

The circumstances under which the Emancipation Proclamation was issued by Mr. Lincoln are well-known facts of history. That it did not accord with his personal views of power and policy seems to be well established. The "pressure" to which he alluded in his conferences with border state representatives, finally proved too strong for him to resist, and overcame his resolution to adopt the method of emancipation with consent and compensation.[1] While many of the radicals disdained to discuss the legality of military manumission, and scouted the existence of any law in war above the will of a commander, others recognized the advisability of formulating a theory to rest the desired process upon. Precedents and opinions were sought for with but moderate success. British generals in the Revolutionary War carried off slaves, though not necessarily to set them free. In the War of 1812 also, the negroes were invited to join the enemy's standard. The action of the French in San Domingo was cited, though the consequences that ensued were not particularly dwelt upon.[2] But

[1] See McPherson, History of the Rebellion, p. 214. Also, *North American Review*, N. S., vol. 130, p. 170.

[2] Whiting, War Powers, pp. 71 and 72.

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these cases were to illustrate the law of nations on the point. The first and in fact the only advocate of the power under our constitution in particular was John Quincy Adams. In the course of his arduous struggle against slavery in the House of Representatives, the ex-President had on several occasions taken strong ground for the right of Congress to interfere with slavery under the war power. And carrying the principle further, he maintained that "not only the President of the United States, but also the commander of the army, has power to order the universal emancipation of the slaves."[1] If the power appertains to a military chief as such, Mr. Adams was unquestionably right in attributing it to the commander as well as to the President. But the difficulty lies in the scope of pure military law. How far can the decree of a commanding general be effectual in fixing the judicial status of the slave? It may be taken for granted that a commander can make temporary disposition of either property or men that come into the control of his army. But will that disposition be held conclusive when peace and the reign of civil law are re-established? And again, can the authority of a military officer extend to persons and property beyond the reach of the army?

The efficacy that was generally attributed to the decree of the President, as definitely abolishing slavery in the United States, was a deduction from the prevalent doctrine heretofore noticed, which made no distinction between the powers of President and those of commander-in-chief. To question the authority of the proclamation in the Southern states was considered equivalent to recognizing the independence of those states. But, in fact, no such idea was involved. As civil executive, Mr. Lincoln was President of all the states, South as well as North. But as civil executive, he could never have issued the proclamation. Only as commander of an army did he issue it; and the fact that his civil functions embraced the whole territory of the United States, could in no way extend his military authority to regions where he had no army to command.

It has been often said that the first of January, 1863, marks

[1] Quoted in Whiting, p. 81.

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the most distinct epoch in the history of the war. The Emancipation Proclamation is assumed as the dividing line between the old system and the new. This view is more appropriate to the state of affairs in the South than to that in the North. It is unquestionably true that Lincoln's decree furnished the Southern leaders with a most effective instrument for the consolidation of sentiment in the Confederacy. From that time the South was a unit, and her struggle was a desperate battle for existence. But in the North, on the other hand, the triumph of the radicals over the President awakened feelings of apprehension among all the other political factions. Mr. Lincoln admits, in his message to Congress in December, that the issue of the proclamation "was followed by dark and doubtful days." Nor was the gloom confined to the political arena. The bloody reverse at Fredericksburg, the narrow escape from disaster at Murfreesboro, and later the disheartening defeat at Chancellorsville, involved the military situation in hopeless uncertainty. Meanwhile, the discussion of the *habeas corpus* bill and the conscription act in Congress and in the country at large aroused the bitterness which culminated in disturbances like the draft riots. In all respects the first half of the year 1863 was the period of lowest ebb of the national fortunes. The turn of the tide came with the Nation's birthday. In the field, Gettysburg and Vicksburg marked the change. The stern enforcement of the conscription act was successful finally in putting the government on a firm footing with respect to men, while the enormous loan of $900,000,000, authorized by the last Congress, satisfactorily settled the matter of supplies.

At this time the centralization of power in the executive had reached its climax. The vast authority which by wide implication or bald assumption had been derived from the constitution for Congress, had been turned over almost bodily to the President. In addition to the powers conferred by the confiscation and *habeas corpus* acts, the enrollment act of March 3, 1863, had overturned the old state militia system, and had created a United States militia, from which the President was authorized to draft men at his pleasure. Though the constitutionality of this act

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was violently assailed, the power given to Congress "to raise and support armies" was ample to cover the ground, and the force of the assaults fell chiefly upon the centralizing tendency of the bill.[1] It was much too late in the day, however, for any successful effort to check the flood that was sweeping away the old conservative landmarks. The ruling statesmanship of the time demanded that the territorial unity of the Nation should outweigh all other considerations. By the summer of 1863, the question of war powers in the general government for the suppression of insurrection had been definitely settled. The military result of the war became only a question of time.

Important legal and political results had already been attained. The most obvious of these was the final disappearance of the assumed right of state secession, and with it the whole doctrine of state sovereignty in all its ramifications. For, while it is often said that a right cannot be destroyed by force, the maxim refers rather to the abstract moral conviction than to the concrete legal privilege. The effort to exercise the alleged right had failed; and whether the means employed to prevent the exercise were revolutionary or not, the constitutional law of the country can take cognizance only of the results. But if the right of a state as an organized community to sever its political relations with other communities does not exist, there can be no claim of sovereignty for the state. For if political sovereignty means anything, it includes the attribute of self-determination as to its status in respect to other sovereignties. Limitation in this attribute is fatal to the conception of sovereignty, and accordingly, the failure of secession removed one pregnant source of confusion at the very basis of our system.

WM. A. DUNNING.

[1] See Bayard's Speech, Globe, 3d sess. XXXVII. Cong., p. 1363.

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AMBIGUOUS CITIZENSHIP.

WE have been a nation for more than a century, and most of that time without knowing precisely what we meant by the phrase "citizen of the United States." Mr. Jefferson, who impressed himself so indelibly upon our early constitutional and political history, had become intoxicated to the verge of madness with the utopian theories of government formulated by Rousseau. He started out with the assumption that every man was a sort of nondescript sovereign floating at random through the universe, governed by laws inherent in himself, rather than a member of the civil society into which he had been born or adopted and to which he owed corresponding duties. The logical sequence of such a theory, as exemplified by the first French republic, and as still illustrated by the efforts at self-government in some portions of Spanish America, is confusion and disorder; and it falls short of hopeless anarchy only when it is repudiated by the common sense of a practical people. A set of impracticable ideas derived from this source was early incorporated into our federal system; and although experience soon demonstrated their folly, it has taken more than three-quarters of a century to get rid of them. The new constitution of 1787 was intended to accomplish this; but it retained just enough of the old leaven to seriously threaten the existence of the Republic. Finally, however, after having been brought to the very brink of ruin by the so-called "Jeffersonian theory," we were forced to abandon it *in toto* and forever.

This led to our first attempt at a constitutional definition of the phrase, "citizen of the United States." It occurs in article xiv. of the amendments to the constitution, and is in the following words:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside.

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Previous to that time, we searched in vain for some clear and authentic definition of the term. It could be found neither in our legislative annals, nor in our judicial decisions, nor in the consentaneous action of any two departments of our government. The subject was as little understood, in its elements and in its details, and as open to speculative criticism in 1860 as it was at the foundation of the government. Three-quarters of a century of practical enjoyment of citizenship under the constitution had taught us neither the exact meaning of the word nor the constituent elements of the thing itself. It had been held, as one of the corollaries of the "Jeffersonian theory" that a person could be a citizen of the federal government only as he was such incidentally by reason of his being a citizen of some one of the states; so that, for instance, a man born and residing in the District of Columbia, or other territory of the United States, was not a citizen of the United States. And absurd as this proposition now seems, it had never been judicially controverted. On the contrary, it had been indirectly affirmed by the national Supreme Court itself, in the *Dred Scott* case. Nor had that decision ever been reversed, though the instinct of self-preservation caused it to be quietly ignored during the Lincoln administration.

It is sheer nonsense, then, to contend (as some people are still in the habit of contending) that persons of the African race are, or were ever intended to be, the sole beneficiaries of that amendment. It reaches far beyond the mere incidental consequences of slavery. It eradicates, as it was intended to eradicate, a most pernicious doctrine that had distracted the country ever since the foundation of the government, and which ultimately culminated in civil war. It put forever at rest the question as to whether a person is a citizen of the national government other than as he is such incidentally by reason of his being a citizen of one of the "sovereign" states. Nay, it goes even beyond this and makes a marked distinction between citizenship of the United States and citizenship of one of the individual states. It completely reverses the "Jeffersonian" order of allegiance. Thus, a person may now not only be

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a citizen of the United States without being a citizen of any one state of the Union, but an important element is necessary to give him the character of the latter. He must "reside" within a state to make him a citizen of it; whereas it is only necessary that he should be born or naturalized somewhere within our national jurisdiction, in order to make him a citizen of the United States.

It is still rather loosely asserted, occasionally, that this amendment fastens upon us the old feudal doctrine (derived from the English common law) that all persons born within our territory and jurisdiction are, with few exceptions and to all practical purposes, citizens of the United States. But the amendment makes personal subjection to our jurisdiction an essential element of citizenship; and this excludes the Indian. In his tribal relations, he is not subject to our jurisdiction. We make treaties with him, the same as with other foreign powers. He cannot even become a naturalized citizen of the United States. He can be admitted only by special act of Congress or by treaty. The Munsee Indians of Wisconsin are no exception; because the enabling statute of March, 1865, falls within the category of special legislation. Nor do the Pueblos of New Mexico constitute an exception; because, as citizens of Mexico, they became citizens of the United States by the treaty of Guadaloupe-Hidalgo. Nor have we adopted the test of nationality by the nationality of the parent, without an important modification. By the statute of February, 1855, all persons born abroad whose fathers were at the time citizens of the United States are deemed citizens; but citizenship thus acquired cannot descend to persons whose fathers never resided in the United States. So that the privilege expires with the first generation. In reality, therefore, we have adopted neither the test by place of birth, nor that by the nationality of the parent, without important qualifications.

Having, however, by the fourteenth amendment eliminated the Jeffersonian heresy from our federal system, we are no longer a nation without citizens; but a nation in fact as well as in name, whose component parts are living men and women

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who owe it a direct, personal and unqualified allegiance. And the best evidence that this vexed question has been permanently settled, is the fact that the opponents of the constitutional reform never were able to attain to power until they explicitly abandoned their opposition, and proclaimed themselves the truest friends of the fourteenth amendment.

There still remain, however, one or two other questions of minor import, touching the matter of citizenship, which we should do well to settle. Diverse theories of expatriation, conflicting modes of naturalization, and the vague and ambiguous character of our legislation on these points, often render the *status* of our adopted citizens equivocal. Thus, while we are committed to the doctrine of the "natural right" of expatriation, some of the European governments still deny it; and these adverse theories ripen into practical issues when considered in connection with the conflicting methods of naturalization adopted by different governments.

It has never been difficult for a foreigner to become a citizen of the United States; and when once admitted he is thenceforth entitled, while within our territorial limits, to all the privileges and immunities of a native born citizen. Every office of honor or profit, with the single exception of the presidency, is open to him. But it does not thence follow, as some have supposed, that he has all the rights of a native born citizen outside our territorial limits. If he should visit the country of his former allegiance, the protection to be given him therein by our government becomes complicated with other questions of natural rights and duties which no civilized people can afford to ignore. His change of allegiance does not necessarily discharge him from obligations or penalties which he may have actually incurred before emigration. He cannot, therefore, be said to carry with him to his native country all those rights and immunities which constitute the proud heritage of every native born American citizen.

I am aware that there is a popular opinion directly to the contrary of this; and that it has even found expression in one of our statutes. I allude, of course, to the declaration of June

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27, 1868, generally known as the "Expatriation Act." It is therein declared:

> All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of person and property which is accorded to native born citizens.

But Congress cannot alter the law of nations; nor is any declaration by Congress contrary thereto binding upon the President, who is charged by the constitution with the administration of our foreign affairs.

Let us suppose a case in point, and one which is within the range of common experience. A man deserts the army or navy, or is recreant to some public trust, or, after having been conscripted, emigrates to the United States in order to avoid the required service, or to escape the legal consequences of his misconduct. He subsequently becomes a naturalized citizen of the United States. Will any well-informed man seriously contend that the mere change of citizenship extinguishes the obligation in the one case, or satisfies the penalty in the other? A change of allegiance discharges the emigrant from liability to any service not previously required of him; but it certainly does not extinguish obligations and penalties that were incurred before emigration. These remain; and should he return to his native country, they may legally be required of him. This principle is so generally conceded in all our treaties on the subject with foreign countries, that it is no longer a matter of dispute.

The language of the act is equally unfortunate when it declares "the right of expatriation" to be "a natural and inherent right of all people." For if it was intended to assert this right with respect to American citizens, a much more simple and effective declaration would have been that citizens of the United States cease to be such whenever they are duly naturalized in some foreign state. If, however, by "all people," those of all nationalities were intended, the declaration is something worse than a mere superfluity; for it is both immodest and gratuitous. It may be law with respect to American citizens; but with

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respect to citizens or subjects of all foreign countries, it is merely an unsolicited expression of opinion. It is probable, therefore, that if this piece of legislative rhetoric was ever intended for anything more than mere "buncombe," it would have defined "expatriation," declared how and under what circumstances American citizens may expatriate themselves, what is essential to the attainment of this end, and what shall be the evidence of its accomplishment. Until we have some such explicit declaration by Congress, vexatious international questions are likely to be the rule rather than the exception.

Furthermore, in order to check the growing abuse of American citizenship in foreign countries, some measures should be devised to put a stop to our wholesale naturalization frauds. To this end, the jurisdiction of the federal courts ought to be made as exclusive in all matters pertaining to naturalization as is the power of the federal Congress to legislate upon them. A man in a foreign country, who claims protection as an adopted citizen of the United States, should be required to produce some better evidence of being entitled to it than a certificate of naturalization by some petty municipal magistrate who, although he may have "a clerk and a seal," is usually wanting in that complete independence of ward politics so essential to judicial integrity.

The nationality of married women is another source of diplomatic controversy. We have no statute defining the *status* of American women married to foreigners; and in every country, except where the English common law prevails, the nationality of a woman, on marriage, merges in that of her husband. She loses her citizenship and acquires his. This rule was adopted by England in 1870.[1] But in the United States the rule of the common law still obtains; and if a native woman marries an alien, she retains her original nationality. She may acquire her husband's nationality, but does not thereby lose her own. In this, our law is strangely inconsistent; because under it a foreign woman married to a citizen thereby becomes a citizen. Our so-called "Expatriation Act" does not change the common-

[1] 33 and 34 Vict. ch. 14, art. 10.

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law rule. It merely asserts the "right" of expatriation. It does not go beyond this and say how the "right" may be converted into a fact. Marriage, in itself, is certainly not conclusive evidence of a woman's intention to expatriate herself; and after marriage she accompanies her husband, leaving the legal consequences to take care of themselves. True, her foreign domicile places her beyond our jurisdiction, and thus, under the fourteenth amendment, deprives her of one of the essential elements of citizenship. But this is equally true of any male citizen who resides abroad for commercial purposes; and yet no one is prepared to contend that he thereby intended to expatriate himself, or that he forfeits his nationality.

If it be desirable, therefore, to put ourselves in harmony with the civilized world on this point, we ought to make the rule reciprocal. We might easily do this by a legislative provision that the nationality of the wife shall follow that of her husband and change as he changes his. And if such a law should have a tendency to deter American heiresses from marrying titled adventurers and penniless nobodies from abroad, I assume that this would hardly be urged as an objection.

The foregoing suggestions are not all new. Most of them are familiar to those acquainted with the administration of our foreign affairs. But they are believed to be practical. They merely aim to indicate available remedies for acknowledged evils. Our naturalization laws are still very defective, as shown by the increasing number of naturalization frauds, and our whole legislation on the subject of expatriation is almost meaningless. The consequence is, constant doubt and conflicting opinions where doubt ought not to exist and where opinion should be uniform.

WILLIAM L. SCRUGGS.

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OWEN AND THE CHRISTIAN SOCIALISTS.

TO the attentive student of English economic history, nothing can be more striking than the great transformation effected in the spirit in which social problems and the relations of the working classes are discussed at the present day. The rise of the factory system with its attendant abuses; the narrow class legislation of Parliament which left the operatives without any adequate protection and at the same time severely repressed all attempts at combination; the vicious system which regulated wages and prices through the fiat of peace justices; and finally the unfortunate wages-fund theory of orthodox economists — all these causes combined to produce in the higher classes a feeling of indifference, in the laboring population a spirit of sullen and dogged resistance which occasionally found vent in violent outbreaks and finally culminated in the Chartist movement. To-day the state of affairs is materially altered. Trades-unions are no longer regarded as revolutionary or illegitimate; their just demands are recognized and their aspirations favored. Eminent economists and noble lords preside at their congresses and conventions. Remedial legislation has been introduced to remove crying abuses and redress absolute wrongs. The dogmas of the Manchester sect are being supplanted by the doctrines of the historical school; and, above all, the whole tone of current discussion and the point of view adopted by employers afford abundant proof that the antagonism of class interests is by no means so acute as in the generation gone by. In England, which has far outstripped us in the path of economic reform, the beneficent effects of this vast change of sentiment have already begun to make their appearance; and among the most potent factors in producing this great change must be classed the eloquent and enthusiastic apostles of socialism, whose work we shall attempt briefly to describe.

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There is perhaps no term in the whole vocabulary more abused than the word socialism — a term in the minds of some tantamount to organized revolution and fraught with the direst possibilities of violence. But the underlying idea of the word is in itself harmless. Socialism is the opposite of individualism; and in this wider sense we are all more or less socialists. The mainsprings of all human action are of a twofold character; and we find in every individual impulses or forces which tend to weld society together, to render the idea of self subservient to that of the common weal. True socialism simply demands a wider scope for the play of this public spirit, a fuller appreciation of the importance of this common moral element which underlies all collective action. To confound it with communism involves a crass misconception; to identify it with revolution is no less serious an error. A scientific nomenclature ought to distinguish between socialism and social-democracy or collectivism. The former demands economic and social reform; the latter advocates political disturbance and revolutionary propaganda to effect its ends. The one is pacific and orderly, simply laying stress on the development of those ideas which render harmonious coëxistence in society possible. The other is essentially political in its aspirations; its formidable weapons are those of incitement to violence and invitation to crime; its object is the assumption of all the means of production by governmental machinery. The line of demarcation between the two is often irregular and unclear; but socialism proper, as a principle of human action, connotes neither violence nor anarchy, and does not necessarily imply the realization of its ideal through the agency of governmental interference. English socialism has in fact (until recently) been neither anarchic, political, nor disruptive; and in so far as it has remained untinged by the infiltration of continental ideas, it has been peaceable, deprecating all endeavors to excite fiery opposition among the masses, and has expressly disavowed faith in state aid as a universal panacea.

Socialistic and communistic ideals are not exclusively products of modern times. At all epochs and in all nations the

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souls of noble men have been stirred to righteous indignation at the sight of so much oppression and perhaps undeserved misery among their fellow-beings, and propositions to effect a regeneration of society have never been lacking. Nothing can be more erroneous than to represent the social reformer as a bugbear, to depict him as a hypocrite devoid of all true sympathy with humanity, and concealing his own selfish designs under the mask of good will to all. There are, indeed, and always have been, demagogues who work upon the dissatisfaction of the masses and attempt at all costs to achieve their own preferment by using the weapons of popular agitation; but it cannot be denied that many great leaders in the movement for social reform during this century have been men of the purest motives and the most spotless lives. At the same time, a more thorough knowledge of economic history would convince many of our modern social therapeutists that their so-called great discoveries are mere restatements of ideas hoary with the age of centuries, and that their schemes of a reconstruction of the universe are perhaps as far removed from a speedy realization as those of their many predecessors.

England, too, has had her social reformers and agitators before this century. I need only mention Wat Tyler, John Ball, Jack Cade, Robert Kett, and, at the close of the last century, the agrarian communist, Thomas Spence. But these were all men who formed no new systems, and exerted no commanding influence in shaping the course of future ideas. It was reserved for the nineteenth century to witness the social reforms of Owen, the Chartists, the Sacred Socialists, the Anti-Corn-Law leaguers, the Christian Socialists, and, finally, the agitators of to-day. Among these, the work of Cobden and Bright, who were anything but socialists, has been repeatedly described; that of Owen has been partly misunderstood; and that of the others is all but unknown, or at least inadequately appreciated. During the second quarter of this century, moreover, we find a numerous school of economists, hitherto entirely neglected, who manfully battled against the prevalent tendencies, and who may fairly be termed socialists. The history of

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English socialism presents, in fact, a scarcely trodden field for the investigator,[1] a completely forgotten side of national development; and yet the whole civilized world is to-day swayed by ideas for which we must in great part thank the English socialists. I propose, in this paper, to say a few words about Owen, and to give a sketch of Christian Socialism, reserving for future examination the remaining phases of English socialism.

The name of Robert Owen will ever be connected with the village of New Lanark, a little spot on the Clyde, where the celebrated Arkwright had in 1784 erected one of the earliest cotton spinneries in Scotland. Owen tells us, in his autobiography, with what enormous difficulties he had to cope, when he finally purchased the property in 1799. The position of the workers there, as in all the factories of the period, was most pitiable. Women and children of the most tender age were employed under conditions which debased both mind and morals, which turned them into stunted cripples and incurable criminals; drunkenness and ignorance, filth and immorality, were the characteristics of a population which viewed the efforts to inaugurate a new system with mistrust and suspicion. Owen, with his belief in the omnipotent effect of circumstance in moulding character, was naturally averse to all systems of punishment, preferring the preventive to the positive checks in his treatment of crime and disorder. A long experience as manufacturer had taught him that sudden changes were injudicious, and would defeat their own objects; and he therefore proceeded cautiously in his improvements. Drunkenness was discountenanced by the introduction of resorts where the workmen could find both pleasure and profit; immorality was checked by informal lectures setting forth its practical evils, as well as by various ingenious contrivances calculated to appeal to the honor of the operatives; the employment of young children was discontinued; the homes of the people were materially improved; good, honest provisions were supplied at cost price; children's

[1] Janzhul, Angliskaya svobodnaya torgovlya, vol. ii. ch. 3, gives the best, although still incomplete, account of English social movements.

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schools were started, and insurance funds against old age and illness were not forgotten. Owen himself was governor of this patriarchal society, and to him all disputes were relegated for ultimate arbitration — a function he exercised so satisfactorily that quarrels decreased with amazing rapidity. His career at New Lanark was the most fruitful and beneficent epoch in an eventful life, and for many years he centred his attention on the necessary and the possible. Unhampered by lack of means, untrammelled as yet by the consuming desire to regenerate the world which was afterwards to turn him into a visionary schemer and a sterile agitator, he confined all his endeavors to the mill. The fame of the infant school, or New Institution, spread far and wide, until celebrities from all parts of the world were counted in the unceasing flow of visitors.

In 1812 Owen began to divulge his theories to the public. The underlying thought of his philosophy, the idea that repeatedly recurs in all his writings, is, that man's character is formed *for* not *by* him. "The general bodily and mental differences are solely the effects of education; man becomes a wild, ferocious savage, a cannibal, or a highly civilized and benevolent being, according to the circumstances in which he may be placed from his birth."[1] He ascribed all human misery to absolute ignorance of this vital principle, and in the *New View of Society* he calls the notion that individuals form their own character, "the enemy of humanity, the hydra of human calamity."[2] The will of man has no power whatever over his opinions, and only a complete reversal of all educational methods would succeed in changing the face of the universe and the destiny of nations. This apotheosis of circumstances naturally led Owen to the extreme conclusion that individual man is absolutely irresponsible for his conduct or character, since they are formed for him by society. Such always remained the substratum of Owen's teachings; and yet his practical and immediate propositions to the government were, with one exception, of a very modest kind, many of them having been actually car-

[1] Speech of 1812 at Glasgow; Four Essays, I., p. 14.
[2] Essay IV., p. 125; Essay II., p. 57; Essay III., p. 99.

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ried out to-day. He was, however, no economist; and, like too many enthusiasts who proclaim far and wide their novel solution of a problem whose first conditions they have only insufficiently studied, generally came to grief in the attempt to put his later theories into practice. Already in his earliest writings he proposes that the government prepare a reserve of employment for the surplus laborers, "the price of public labor never falling below the means of temperate existence." [1] In this we see foreshadowed the celebrated doctrine of *droit au travail* which played an important role in the Revolution of 1848, and which contains a principle rather perilous to the perpetuation of the state.

With this exception Owen did not invoke undue state intervention, or ascribe to the government more extended functions than it everywhere possesses to-day. His position during the New Lanark career was, therefore, simply that of a reformer, not of a socialist; and his efforts were mainly directed to the abolition of certain laws which he regarded as in the highest degree detrimental. He appeals to the individuals themselves, and in an eloquent preface addresses the superintendents of factories, pleading the cause of the living machinery, hitherto so neglected.[2] But while doing his utmost to bring the merits of the system to the cognizance of manufacturers and educators, he was careful to abstain from appealing to the passions of the mob. His gentle and almost childlike nature, his faith in humanity and in the absolute truth of his own remedy, made him timorous of any interference by the working classes themselves. In fact, since the entire character of a generation is, according to Owen, solely dependent on the circumstances to which it is subjected, to take the governing classes to task would be as irrational as to punish the malefactor for crimes committed by his predecessor or neighbor. There was, indeed, no room for violence in Owen's philosophy. The importance of his naïve but large-hearted confidence in self cannot be overestimated, for had he in the days of his prodigious influence cast his lot with the party agitators in kindling class hatred, the disaffection of the artisans, foreboding enough at the time, might have been

[1] Essay IV., p. 169.

[2] Essay III., p. 68.

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dangerously increased. "To do good to all men, to explain what is true, not to attack what is false," is the self-expressed object of his writings at this period. He was didactic, not revolutionary.

In all this philosophy there is a germ of truth. The importance of environment as a factor in change, both physical and moral, is a platitude which needs no justification, and has found a reformulation in the modern theory of evolution. But to magnify this principle into the one sole cause of all transformation, and to deny the existence of moral responsibility, is to abdicate for man the sense of his own individuality and to adopt a sad theory of fatalism — is in fact to confound virtue and vice by removing all consciousness of accountability for either. Owen failed to perceive this; his glorification of circumstance is an absurd exaggeration of a partially correct idea; his fond belief in the immediate acceptance of its complete truth was a result of his childlike and trusting enthusiasm. For some years, indeed, he continued his endeavors to effect practical reforms; and, after a meeting of cotton manufacturers in 1815, began an agitation for a factory law which should curtail the hours of work, prohibit infant labor, and afford a sufficient protection to the health and education of the operatives. Notwithstanding the opposition of the employers and the doleful predictions of the orthodox economists who foresaw the ruin of English industry by this unheard of violation of *laissez faire*, the bill finally became a law in 1819 — the precursor of many reforms which have totally changed the condition of the English workman. For this, if for nothing else, Owen is deserving of the highest praise and gratitude.

But he was now no longer content with these exploits. In 1817 he outlined the plans, before only vaguely hinted at, of the Agricultural and Manufacturing Villages of Unity and Mutual Co-operation.[1] This was a most important step, the turning point in his career and the virtual beginning of English social-

[1] Report to the Association for the Relief of the Manufacturing and Laboring Poor, pp. 11–24. The ideas are in part taken from a tract of John Bellers: Proposals for raising a Colledge of Industry, 1696.

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ism. Every one was to work for the benefit of all; the meals were to be cooked and eaten in common; dormitories in the shape of parallelograms were to be erected; and the details of government regulated in the most minute manner. Owen became a fanatic in the prosecution of his new ideal, considering himself the most popular man in the kingdom, and influenced by the lavish attention heaped on him from all quarters. But at this juncture his violent attack on all religions[1] alienated the affections of many influential adherents — and it must be said that he showed a narrow-mindedness as great as that which he ascribed to his opponents. The change in his career was, however, the result not so much of his religious as of his socialistic views. Owen was now a world regenerator, an extremist, a socialistic idealist, whose confident anticipation of a millennium seemed to increase in inverse ratio to the failure of his practical schemes.[2] To enter into the details of his communities would be tedious. The short-lived experiments of Motherwell and Orbiston in Scotland, of New Harmony in Indiana, are well known; but Owen, nothing daunted, made a triumphal visit to America in 1829, being greeted with universal acclamation, as on the continent ten years before. He had almost completed negotiations with the Mexican government for the grant of an immense tract on which to attempt his experiment on a large scale — the President had signified his adherence to the scheme — when suddenly with the fall of the liberal government all the bright prospects again vanished.

In this second period of Owen's activity there were two practical results: co-operation and socialism. Owen was the founder of the co-operative movement in England — a fact often ignored by those who glibly use the word to-day with an utter failure to discern its true significance. "The secret is out," says Owen; "it is unrestrained co-operation on the part of all, for every purpose of human life."[3] Co-operation then simply meant associa-

[1] Address at City of London Tavern, Aug. 21, 1817, p. 58. Also, Tracts relative to a New View of Society, IV., p. 77.

[2] *Cf.* Memorial to Allied Powers at Aix-la-Chapelle, p. 15.

[3] *The Economist*, Aug. 27, 1821.

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tion, a pacific communism as outlined in the propositions for the model villages. He did not have in view any such petty contrivances as the co-operative stores where provisions are sold, or even co-operative workshops where the capitalist employer should be eliminated; his conception was far more ambitious, and embraced such comprehensive measures as would render mankind ignorant of discord, desirous only of universal felicity. In 1830 the movement was in full blast, with over five hundred associations and numerous newspapers devoted to the cause. Owen took the matter energetically in hand, for the societies were all more or less tinctured with his peculiar views, and he looked forward to the period when they would be enabled to realize his aspirations in all particulars. "But," said he, "let it be universally understood that the grand ultimate object of all co-operative associations, whether engaged in trading, manufacturing, or agricultural pursuits, is community in land."[1] Annual congresses were held, and the grave English reviews treated the movement as a portentous fact, fraught with enormous possibilities. Everybody talked co-operation, and, as to-day, few really understood it. And although these far-reaching endeavors proved to be visionary, although the practical experiments all resulted in failure, Owen nevertheless initiated a movement destined, in a coming decade, to produce important results; and his enthusiasm gave to that movement an impulse the force of which is not yet spent.

The second great result of Owen's activity was the spread of socialism, which was to a great extent comprehended in the co-operative movement. In the *Outline of the Rational System* the whole theory is repeated in aphoristic paragraphs, and "useless private property" is discarded.[2] But it must not be supposed that this socialism in its extreme form, this virtual communism, had anything in common with the revolutionary plans of a Babœuf. Such insinuations were indignantly repelled.[3] Owen continued to preach moderation to the work-

[1] *The Crisis*, vol. i., p. 23, May 5, 1832. [2] *The Crisis*, vol. i., no. 9, May 26, 1832.

[3] "We wish equality, it is true, but it is voluntary equality; we are levellers, but we wish to level up, not down. . . . We have no desire to touch one particle of the wealth now existing." William Pare at Congress of 1832. *The Crisis*, April 28, 1832.

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men; he was an apostle of love, peace and charity, not of envy and discord; and the motto of his principal journal read: "If we cannot yet reconcile all opinions, let us now endeavor to unite all hearts." His theory of labor is especially interesting, as it forms the basis of all German socialism at the present day. Although failing to draw the logical conclusions of Marx, Owen did not shrink from a practical application of his doctrine that "the natural standard of value is, in principle, human labor." Believing money to be the root of all evil, he inaugurated the Equitable Banks of Exchange, where property of all kinds was received and exchanged on the principle of "labor for equal value of labor," through the medium of labor-notes.[1] It was not long, of course, before the labor-bazaar ended in dismal failure, proving already at that time the untenableness of the later theories of Rodbertus on the *normaler Arbeitstag* with its proposed labor-money, as well as the *banque d'échange* of Proudhon. To maintain that labor is the source of value is inexact and misleading; to set up fixed quantities of labor as the measure of value is absolutely absurd. How can the labor of a hod-carrier and of a prima donna be reduced to the same dimensions and valued according to the time employed, according to the average *6d.* per hour of Owen, or the "labor-jelly" of the Germans? Who and what is to determine the proportion of this average labor in a bushel of wheat, and in a palace containing rare works of art? In Owen's bank a self-appointed council undertook the task, but with the most lamentable results, not because of any lack of discernment, but simply on account of the utter impracticability of the scheme. "Labor" becomes an unmeaning abstraction when the exertions of a scavenger and the lucubrations of a philosopher are jumbled together into one category, payable at the same rate per hour.

After this inglorious attempt, Owen's interest in co-operation gradually vanished, his energy being henceforth centred on the propagation of his all-embracing socialistic schemes. Repeated addresses were issued, numerous associations formed, while the most bizarre ideas were proposed, such as the floating co-opera-

[1] For their form, see *The Crisis*, vol. i., p. 61.

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tive community on the Thames.[1] After an unsuccessful attempt to win over the trades-unions, at whose first large congress he presided, Owen evidently entered on his dotage. As Bentham says: "He begins in vapor and ends in smoke."[2] In 1850 he called the world a great lunatic asylum, but was still full of confidence in his panacea; shortly after, he absolutely denied the right of property, and became an ardent spiritualist; and in his last year the old man showed the persistence of his convictions by addressing an open letter to the potentates of the earth, and by writing an autobiography full of youthful enthusiasm.

Owen was thus a visionary, like St. Simon and Fourier; but, unlike them, he had a most beneficent effect on the social progress of his country. His economic doctrines were crude and often absurd; his theory of marriage was, to say the least, peculiar; his socialistic views were utopian: but he succeeded in proving that a factory could be made to benefit both master and workman; he initiated the reform in the condition of the laboring classes; he laid the firm foundation on which the co-operative movement of our times is erecting its successful edifice. England must thank him, above all, for his success in preventing socialism from consolidating with Chartism — a movement different from the superficially analogous cases on the continent. The French Revolution was perhaps more a social than a political cataclysm; and even to Morelly and Mably a political renaissance was only the first step to social regeneration. But with the Chartists, although the excitement was largely fostered by the sad economic condition of the laborers, the direct aims were purely political, and, if the truth be told, to a great extent innocent. Had Owen been of a less pacific nature, had he been willing to make use of the weapons of political discontent to reach his ends, had he, in other words, brought the socialists into coalition with the Chartists, the movement might have attained far more threatening propor-

[1] *The New Moral World*, Nov. 1834. Among Owen's societies were the Association of All Classes of All Nations, the National Community Friendly Society, the Universal Community Society of Rational Religionists. All published reports.

[2] Collected Works, Bowring's ed., X., 570.

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tions. But Owen deprecated all violence, and placed no reliance on the Chartist ideal. He desired reform, but it was voluntary, not compulsory reform. His kind heart and unquenchable confidence taught him to seek a change only through peace, love and education; his socialism was not destructive, but constructive; his activity engendered neither unrest nor disaffection.

So much for the first phase of English socialism. More interesting, although more short-lived, was another phase, that of Christian Socialism — a movement called forth by the desperate state of the working classes toward the middle of this century. From the rise of the factory system down to the repeal of the corn laws, the condition of the artisans had been going from bad to worse, until their suffering, their inhuman treatment, their abject destitution, almost beggared description.[1] It is difficult for us of the present day to form a conception of the listless indifference of the upper classes and the inattention of professed economists in regard to the subject. The Christian Socialist movement arose as a protest against this indifference and the utterly negative standpoint of the scientists. Its two chief expounders were ministers of the Church of England, those noble-souled men, Maurice and Kingsley.

Frederick Denison Maurice, born in 1805, took an active part, from his earliest years, in the benevolent schemes of his father, a Unitarian minister; and the early familiarity with vice and destitution he thus acquired doubtless laid the foundation for future sympathy with all suffering. He was one of nature's true noblemen. Professor, theologian, historian, philosopher, he was conspicuous in each character; and it is doubtful which should be more admired, his intellectual eminence or his moral earnestness. His humility of character, his modesty and distrust of self, the sympathetic aid he so freely accorded to all searchers and strugglers, his uncompromising antagonism to every form

[1] *Cf.* the Parliamentary Reports, especially of 1816, 1824, 1834, 1843; Faucher, Études sur l'Angleterre, I., 360–536; Engel, Lage der arbeitenden Klassen Englands; and for a good pen-picture, Thomas Cooper, Autobiography, ch. 13.

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of insincerity and evasion, coupled with a rare eloquence and a subtle power of moulding men's thoughts, endeared him to all, whether friends or acquaintances. With a nature thoroughly steeped in religion, he firmly believed in the ethical basis of Christianity, and was, perhaps, more deeply imbued with the teachings of its founder than any of his contemporaries.[1] Impatient of petty differences of doctrine, he longed for one universal true church which should gather all mankind to its fold, which should exorcise all intolerance and injustice. His whole life was devoted to the diffusion and application of this broad conception of religion, and some of the most emphatic of his earlier writings were directed against the famous Oxford or Tractarian movement, which, under the leadership of such men as Pusey, Keble and Newman, was rehabilitating scholasticism and championing the cause of ritualism. His views on social questions were the natural outcome of his fundamental religious ideas, and he firmly believed that political economy was not the foundation of morals and politics, but "must have them for its foundation or be worth nothing."[2]

Already as a young man he had joined a debating club which had grown out of an Owenite society, and where the subject of co-operation often came up for discussion. But he had no sympathy with Owen's fundamental thought. Referring to some remarkable and edifying inconsistencies in the speakers at a conference, Maurice tells us that he never heard stronger testimony to the power of the will to regulate and command circumstances than came from these socialistic worshippers of circumstances.[3] There was, indeed, little in common between the two men: Owen, a rich, benevolent manufacturer, devoid of any scientific training, a staunch rationalist, and forever harping on the one exaggerated principle which was to produce a new society; Maurice, a deeply religious mind, equipped with all the culture of the generation, and although no profound student

[1] *Cf.* the masterly characterizations in Huber, Reisebriefe, II., 16; Brentano, Schmoller's *Jahrbücher*, VII., 744. *Cf.* Ruskin, Fors Clavigera, letter 22, part iii., p. 311 (ed. of 1881).

[2] Life of F. D. Maurice, I., 210.

[3] Letter to Ludlow, Aug. 13, 1849.

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of economics, yet able to separate the chaff from the wheat. Owen was, in fact, a state communist. Maurice said expressly: "The state cannot be communist, never will be, never ought to be."[1] The true state he considered eminently conservative of individual rights and property, the abolition of which would only create dire confusion. But the church, he held, was communistic in principle; the church brought into human society a spiritual fellowship and co-operation, without which the state would soon degenerate into a mere stock-exchange.

In 1846, while professor at King's College and chaplain of Lincoln's Inn, he was solicited by a young lawyer, John Malcolm Ludlow, to aid in a scheme for bringing the leisure and good feeling of the Inns of Court to bear upon the misery of the neighborhood. As a result, a close intimacy sprang up between the two men — an intimacy productive of important results; for Ludlow was soon to become a most ardent and energetic upholder of the new movement, and to supply practical plans for the realization of Maurice's lofty views.

The other great leader in the movement was Charles Kingsley, a young pastor at Eversley, by fourteen years Maurice's junior, and powerfully affected by the theological views of his friend, although their personal acquaintance dated back only to 1844. The two men were radically different in temperament. Maurice was mild, unobtrusive, averse to undue opposition, convincing by his example and his earnest logic rather than by appeals to the feelings. Kingsley was ardent, aggressive and enthusiastic, touching the heart rather than the head. Maurice had a deep, measured style; Kingsley wrote as he spoke, with sentences fervid, passionate, clear-cut. Both were men of transcendent ability, but Maurice was incomparably the superior in thoroughness of conviction, in repose of intellect, in talent for leadership. And yet, while differing in these details of character, they possessed practically coincident views as to the nature and office of religion. An acquaintance with these views is indispensable to a just understanding of their social philosophy.

[1] Life of F. D. Maurice, II., 9.

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According to them the world is a manifestation of God's order, but the selfishness of man has produced a deviation from the original principles. "God's order seems to me more than ever the antagonist of man's systems," writes Maurice to a friend.[1] Far from egotism being the controlling motive of human existence, all that is good in the modern world has come from the principles of self-sacrifice and fraternal co-operation as outlined in Christian ethics. The reintroduction of an universal practical Christianity in the noblest, widest sense of the word, can alone check the downward tendency and engender a pure and peaceful harmony of interests. The religion they strove to realize was that of the founder; their conception was a broad, human one. Vehemently opposing Calvinism and asceticism as removing mankind from a sense of its obligations in this world, asserting the moral impotence of the view which makes the hope of heaven or the fear of hell the sole determinants of human conduct, objecting equally to the Oxford Tractarianism, which they termed an aristocratic movement in the most carnal sense, "a system for saving the souls of fine ladies and gentlemen in an easy and gentlemanlike way"[2] — they were reformers in the fullest sense of the word. The kingdom of Christ was to them no empty formula; they were thoroughly imbued with the belief that this kingdom, created through revelation, actually existed and was destined in time to subjugate all wickedness and misery. Society, according to them, is not to be made anew by arrangements, but is to be regenerated by "finding the law and ground of its order and harmony, the only secret of its existence, in God."[3] In speaking of the term Christian Socialism, they denied having adopted the word Christian merely as a qualifying adjective; they maintained that Christianity has the power of regenerating whatever it comes in contact with, of making that morally healthful which apart from it must be either mischievous or inefficient.[4]

[1] Maurice, Life, II., 44.
[2] Kingsley, Letters and Memories of his Life, II., 250.
[3] Maurice, Kingdom of Christ, *passim*; Life, II., 137.
[4] Maurice, Life, II., 92.

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This was the keynote of the whole movement — the ethical force of Christianity as the leaven of social reform. "Whatever doubt or doctrinal atheism you and your friends may have," wrote Kingsley, "don't fall into moral atheism. Don't forget the eternal goodness, whatever name you call it. I call it God."[1] The Christian Socialists looked with consternation upon the growing cleft between rich and poor, upon the cynical indifference of the one class, and the brooding discontent of the other; they sternly took the clergy to task for their supine inactivity, for squandering time in doctrinal quibbles and neglecting the paramount issues of the time. They strongly protested against the notion of turning the Bible into a book for keeping the poor in order. The Bible they considered, on the contrary, the poor man's book, the voice of God against tyrants, idlers and humbugs. It demands for the poor as much and more than they demand for themselves; it expresses the deepest yearnings of the poor man's heart far more nobly, more searchingly, more daringly, more eloquently, than any modern orator has done. "Justice from God to those whom men oppress, glory from God to those whom men despise" is the thought which runs through the whole Bible. It is the poor man's comfort and the rich man's warning.[2]

This explains in part their name Christian Socialists. But, it will be asked, were they socialists at all, had they anything in common with socialism? Only in the wider sense, we answer. If by socialism we mean that system which, instead of saying "all mine is thine," says "all thine is mine," which is filled with envy and resentment, and preaches indiscriminate violence, which calls on the state as the sole solvent of social unhappiness and the sole regulator of economic relations, then they were indeed not socialists. But if by socialism we mean that principle which looks upon all human beings as members of one family and subject to one law, which regards the workingmen as endued with the same possibilities and worthy of the same

[1] Kingsley, Letters, II., 75.

[2] *Politics for the People*, May 21, 1848. Letter to the Chartists, by Kingsley. *Cf.* Maurice, Letter to Kingsley, April 22, 1848.

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opportunities as others, which sets up the idea of combination and universal co-operation in opposition to the anarchy of disunion and the shortcomings of competition, which, in short, seeks to develop those characteristics that bind mankind together and render them more conscious of reciprocal duties — then in this wider sense, they were indeed the truest socialists of the century. "I must have socialism, or rather humanity," writes Maurice, "recognized as a necessary element and condition of organic society." Their object was to separate that socialism which Southey and other conservatives believed to be the best solution of England's practical difficulties, from communism, red republicanism, or any anarchical opinion whatsoever, and to infuse into it the purest ethical teachings.[1]

We can readily understand that men of such a stamp should view with a sovereign disdain the social doctrines of the Manchester school of political economy. "Of all narrow, conceited, hypocritical, anarchic and atheistic schemes of the universe, the Cobden and Bright one is exactly the worst."[2] To the Christian Socialists a Manchester ascendancy seemed a horrible catastrophe, and it cannot be denied that there were some reasons for their dread. When men like Senior, McCulloch and James Mill pushed the doctrine of self-interest to its ultimate logical issues, dogmatically asserted the immutability of supposed laws, frowned down all efforts of trades-unions to elevate their class, fought the endeavors of Parliament to curtail the abuses of the factory owners, and sheltered themselves under the wide mantle of absolute *laissez faire;* when the Anti-Corn-Law league was joined by the large manufacturers who ostensibly advocated cheaper bread for the operatives, but in reality hoped for lower wages and the crushing of the landed interest; when the utmost possible production of commodities was the *beau idéal,* and man as such utterly thrust into the

[1] Maurice, Letter to Dr. Jelf, Dec. 20, 1851. *Cf.* Kingsley, Letters, I., 248. "We are teaching the workmen true socialism, true liberty, brotherhood and equality — not the carnal dead level equality of the communist, but the spiritual equality of the church idea, which gives every man an equal chance of developing, and rewards every man according to his work."

[2] Letter of Kingsley, *cf.* Hughes, Prefatory Memoir to Alton Locke, p. 51.

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background — then the epithet "the dismal science," or *la science du néant*, as applied to economics seemed almost justified. A century hence, thought Kingsley, mankind will be looking back upon the social philosophy of the present day, as they do upon the witch manias of our forefathers.[1] The Christian Socialists, however, did not object to political economy as such. Kingsley expressly stated that he did not join in the vulgar outcry against economics in general, as absurd and inhuman. He distinctly maintained that the future practical science must be built up more or less on the laws discovered by Adam Smith, Malthus and Ricardo, and that "to be a sound and scientific socialist, a man must first be a sound and scientific political economist." He believed and said that political economy was all but the highest and most spiritual of sciences; the science of organizing politics, and of making men good citizens. But what he did object to, was the exaggeration and perversion of the half-truths of the earlier masters, which had become the entire stock in trade of superficial declaimers. For such men as John Stuart Mill, who believed that the last word in economics had not yet been said, and who were attempting to approach the labor question in a fair and unbiassed spirit, the Christian Socialists entertained the highest respect; and they professed their entire willingness to be silent in any purely economic point, "and let their betters speak." But they strenuously protested against the doctrine and methods of the prevalent school, which formed, so to say, a distortion of economics, and, when confronted by accounts of most abject vice and misery, answered that political economy had nothing to do with the matter, and that, if the supply of labor was equal to the demand, no material laws were infringed. Said Kingsley:

> I expect nothing from a public press which panders to popular Mammonism by scraps of politico-economic cant, and justifies the ignorant miser to himself by retailing Benthamite phrases which sound like scientific laws while they are really nothing but the assertion of barren truisms. I expect nothing from the advocates of *laissez faire* — the pedants whose glory is in the shame of society, who arrogantly talk of

[1] Letter to Bullar, Letters, II., 36.

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economics as of a science so completely perfected, so universal and all-important that common humanity and morality, reason and religion must be pooh-poohed down, if they seem to interfere with its infallible conclusions, and yet revile, as absurd and utopian, the slightest attempt to apply those conclusions to any practical purpose. . . . The man who tells us that we ought to investigate Nature, simply to sit still patiently under her, and let her freeze, and ruin, and starve, and stink us to death, is a goose, whether he calls himself a chemist or a political economist.[1]

But now to the story of their work. The beginning of the year 1848 marked a crisis in English history, a dark period for the English workman. The bad harvests, the window tax, the potato famine, and the Chartist agitation (which had been long drawing to a head) threatened to produce serious disorders; when suddenly the February revolution in Paris acted as a firebrand thrown into the camp of popular discontent. Ireland was on the verge of rebellion, and severe riots occurred in many of the larger English towns. Ludlow, who had been educated in France and was well acquainted with the work of Buchez, the father of French co-operation,[2] returned from a visit to Paris with the conviction that socialism had become a powerful factor in the national life. It must be Christianized, he writes to Maurice, or it will shake Christianity to its foundation, precisely because it appeals to the higher and not to the lower instincts of man.[3] He even desired to throw in his lot with the Parisians by starting a paper called *La Fraternité Chrétienne*, but was dissuaded by the thought that there was an ample field for earnest work at home. The famous "five million" Chartist petition had been handed in, and the call issued for an immense mass-meeting at Kennington Common, April 10. London was thrown into a ferment of excitement, and put under the military government of Wellington. Two hundred thousand special constables were sworn in,

[1] Thoughts on the Frimley Murder, by Parson Lot. *The Christian Socialist*, Nov. 2, Nov. 16, 1850, vol. i., pp. 3, 18. *Cf.* Kingsley's criticism of the economists in A Mad World, my Masters; and in New Miscellanies, p. 6.

[2] For an account of his work, hitherto almost neglected, see Hubert-Valleroux, Les Associations co-opératives, en France et à l'étranger, 1884; and Engländer, Geschichte der französischen Arbeiter-Associationen, Bd. 2, Cap. 24.

[3] Correspondence with Ludlow; Maurice, Life, I., 458 *et seq.*

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but the cloud of discontent became more and more lowering. Kingsley rushed down from Eversley in a state of intense agitation, burning with sympathy for the men, but most apprehensive of the results. At Maurice's house he met Ludlow, and together they walked to the common, where the pouring rain and the energy of O'Connor prevented any outbreak. Quickly it was decided to publish placards and spread them broadcast, in order to allay the fevered minds of the malcontents. Kingsley wrote all night long, and on the morning of the twelfth his appeal to the workingmen of England appeared on thousands of posters.

Workmen of England, you say that you are wronged. Many of you are wronged, and many besides yourself know it. . . . You have more friends than you think for — friends who expect nothing from you, but who love you because you are their brothers, and, therefore, dare not neglect you. . . . You think that the Charter will make you free — would to God it would! The Charter is not bad if the men who use it are not bad. But will the Charter make you free? Will it free you from slavery to £10 bribes? Slavery to beer and gin? Slavery to every spouter who flatters your self-conceit, and stirs up bitterness and headlong rage in you? That, I guess, is real slavery — to be a slave to one's stomach, one's own pocket, one's own temper. Will the Charter cure that? Friends, you want more than acts of Parliament can give. Englishmen, Saxons, leaders of freedom for seven hundred years, men say you have common sense. Then do not humbug yourselves into meaning license when you cry for liberty. . . . Who would dare to refuse you freedom? But there will be no true freedom without virtue, no true science without religion, no true industry without the fear of God, and love to your fellow-citizens. Workers of England, be wise, and then you *must* be free, for you will be *fit* to be free.[1]

This, and much more in stirring language, was signed "A Working Parson" and produced an immense impression. The danger of serious violence passed away, but the uneasy, excitable feeling had by no means completely subsided. Maurice, and the little band of friends who had been in the habit of meeting at his house weekly for discussion of kindred topics, decided, at the suggestion of Ludlow, to start a penny weekly

[1] The placard, which lies before me, is reprinted in Kingsley's Letters, I., 156.

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which should attempt to impress true ideas upon the people, and show them a way out of their difficulties. The list of writers for the *Politics for the People*, as it was called, was remarkable. In addition to Maurice, Kingsley and Ludlow, the chief contributors, we find articles by Archdeacon Hare, Professor Conington, Sir Arthur Helps, Archbishop Whately, Dr. Guy, French, Stanley, Osborn, and others equally noted in the literary world — a rare galaxy of brilliant minds. The columns moreover were opened to the Chartists themselves,[1] and contained many communications from their hands, among others one signed by "One of the wicked Chartists of Kennington Common." The first number teemed with admirable essays, Maurice explaining the object in a strong article on true fraternity.[2] Those portions of the contents that perhaps gave rise to the greatest objurgations — for the writers were soon attacked on all sides by the periodical press — were the three letters to the Chartists from the pen of Kingsley under the pseudonym of Parson Lot.[3] He confesses himself to be a radical reformer, but adds that his quarrel with the Charter is that it does not go far enough, and that it will certainly not give them what they want. He tells them that they have fallen into the mistake of supposing that legislative reform is social reform, and shows that the Charter cannot make the rogues honest or the idle industrious. He accuses them of trying to do God's work with the devil's tools, and asks what is the use of brilliant language about peace and the majesty of order and universal love when it "runs in the same team with ferocity, railing, mad, one-eyed excitement, talking itself into a passion like a street woman." He refers them again and again to the Bible, as the true reformer's guide, and pleads the cause of religion in glowing terms.[4]

[1] *Cf.* letters of Thomas Shorter, and Millbank.

[2] *Politics for the People*, no. 1, May 6, 1848.

[3] At one of the weekly meetings mentioned above, Kingsley, whose logic was of a rather aggressive kind, happened to oppose all the others, and laughingly said that he felt much as Lot must have felt in the cities of the plain when he seemed "as one that mocked to his sons-in-law." From that day he was nicknamed Parson Lot, and for years used no other signature. *Cf.* Hughes, Prefatory Memoir, p. 5.

[4] *Politics for the People*, no. 2, p. 28; no. 4, p. 58.

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Notwithstanding the admirable array of contributors, the paper was discontinued after seventeen numbers for lack of support, although it had attained a circulation of two thousand, and won many of the workmen over to its point of view — principally through the efforts of Walter Cooper, the Chartist tailor, who was soon to lend them considerable aid. Ludlow tells us that the editors, themselves victims of the fearful class estrangements which they came together to break down, did not at first know a single workingman who would read what they wrote. And yet when the paper ceased to exist, perhaps because of its failure, the lurking distrust of the workmen that the editors were actuated by some sinister designs was utterly removed, and many warm personal friendships had been formed. They failed, but with the words of hope upon their lips.[1]

The friends, including Mansfield, Campbell, Furnival, Ellison, and Lord Goderich (afterwards governor-general of India under the name of Earl de Grey and Ripon), far from disbanding, continued the meetings at Maurice's house all winter, and under his guidance started night schools for workingmen and girls in the worst districts, such as Little Ormond Yard, visiting and teaching in person, often under the most adverse conditions, and taking the ragged boys on picnics to the country.[2] Their influence was already great. In the spring of 1849, Walter Cooper, who had been attending several of Maurice's sermons, encouraged the friends to hold public meetings for the workmen. The Chartists were accordingly invited to attend weekly conferences at Cranbourne tavern, where many an eloquent address was delivered under the presidency of Maurice, as guiding spirit. By this time, the now famous Thomas Hughes, who on being suddenly confronted with the squalor of London life had almost become a physical-force chartist, joined the

[1] "When it was seen that their attempt was really no rich man's conspiracy to coax or bully the workingmen out of their rights or out of their hopes, but the sincere endeavor of a few men to see and speak the truth, then indeed their true success began, in the regret manifested by many workmen." *Cf.* the eloquent retrospect of Ludlow in *The Christian Socialist*, no. 10, Jan. 4, 1851, vol. i. p. 73.

[2] For an account of the work, and the joy of the ragged urchins, see article by Furnival in *The Working Man's College Magazine*, II., 144 (September, 1860).

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movement and became one of its ardent apostles.[1] Shorter, Ebenezer Elliott, and other Chartist leaders were regular attendants, and it was at one of these conferences that Kingsley made his celebrated speech beginning, "I am a Church of England parson and a Chartist," in which he acknowledged the grievous wrongs of the workmen but dissuaded them from violence.[2]

At this juncture a series of letters by Mr. Mayhew on London labor and the London poor appeared in one of the daily papers. These letters — especially those on the condition of the working tailors[3] — disclosed a depth of misery hitherto deemed inconceivable. There were, as appeared from the testimony of the workmen themselves at two crowded meetings called by the metropolitan commissioner, two distinct classes of shops among the tailors: the honorable trade in the West End, comprising a few shops where the workmen were employed on the premises; and the dishonorable trade of the show or slop-shops, which comprised about five-sixths of the whole number, and employed over 21,000 workmen. At these slop-shops with their meretricious fronts and plate-glass windows, the lowest possible wages were paid, but not to the tailors themselves. The work was entirely let out to contractors or "sweaters," as they were expressively called, and by them again to a second, third, or fourth sweater, who finally engaged to find the workmen; and it can readily be imagined how small a pittance was left after the repeated deductions of the sweaters' profits. But this was not the worst. As all the work was piece work, the sweaters insisted on the attendance of more tailors than the supply of

[1] Maurice tells an amusing story of the remarks made by some of the members when Hughes' name was suggested: "Oh, you will get no good from that quarter; he will be no good for teaching; a very good fellow for cricket and that sort of thing." Life, I., 483. The author of Tom Brown's School Days soon disclosed other characteristics.

[2] Hughes, Prefatory Memoir, p. 16. There are a few anachronisms in this memoir. The date on p. 16, *e.g.*, should be 1849, not 1848, as appears from Kingsley, Letters, I., 205.

[3] *The Morning Chronicle*, Dec. 14, 1849. In the large work of Henry Mayhew, London Labor and the London Poor, 3 vols., London, 1861, many interesting facts are collected.

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work warranted, claiming that there was no telling when a new order would come in. The miserable laborers were thus compelled to go half the time without any work at all, and to take their meals and often reside in the sweater's house. From that moment they were doomed. The pittance they received was soon swallowed up by a series of systematic exactions. Outrageous prices were demanded for the most filthy and insufficient food, the rent was extortionate, and all manner of petty fines were imposed, so that the poor wretches instead of earning a penny continually fell behind. They were literally stripped of everything, until it was common for half a dozen men to have only one coat between them — the so-called "reliever" — permitting only one to go out at a time. But the condition of most was still more horrible. As they fell into arrears they were cooped up, six and ten at a time, in a miserable dark hole which served both as work and bed room, and in this fetid, reeking atmosphere, half-stifled and half-starved, they were consigned to a perpetual imprisonment, to a real and lasting slavery. Emaciated, diseased, and starved, thousands of these poor wretches endured a living death, the horrors of which are indescribable and which were only faintly portrayed in the testimony of the tailors themselves. Even the government was much to blame, for it practised the contract system to a large extent, and thus directly contributed to the continuation of this revolting state of affairs, while the slop-shops were patronized by the finest noblemen and even by the clergy.

Kingsley's soul was stirred to its utmost depth by these harrowing revelations, and in a storm of indignation he wrote that famous pamphlet, *Cheap Clothes and Nasty*,[1] which begins in this wise:

> King Ryence, says the legend of Prince Arthur, wore a paletot trimmed with kings' beards. In the first French revolution (so Carlyle assures us) there were at Meudon tanneries of human skins. Mammon, at once tyrant and revolutionary, follows both these noble examples — in a more respectable way doubtless, for Mammon hates cruelty. . . .

[1] Reprinted as no. 5 of Tracts by Christian Socialists, and again in Eversley's edition of Alton Locke (1881), pp. 76–109.

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So he shrieks benevolently when a drunken soldier is flogged, but he trims his paletot and adorns his legs with the flesh of men and the skins of women, with degradation, pestilence, heathendom and despair; and then chuckles complacently over the smallness of his tailor's bills. Hypocrite! straining at a gnat and swallowing a camel. What is flogging or hanging, King Ryence's paletot or the tanneries of Meudon, to the slavery, starvation, waste of life, year-long imprisonment in dungeons narrower and fouler than those of the Inquisition, which goes on among thousands of free English clothes-makers at this day?

And then he proceeds to describe the situation in all its horrors, and to take the government and the wealthy to task for permitting such a thing to exist. In all literature I know nothing to be compared with this soul-stirring pamphlet, unless it be the burning words of *Les paroles d'un croyant*, by De Lamennais. Kingsley's essay as well as an article by Ludlow in *Fraser's Magazine*,[1] in which a similar state of affairs was shown to exist among the working girls, created intense excitement, and all kinds of palliatives were put forth. Sydney Herbert and Ashley wrote letters proposing emigration as the only remedy, but were answered by Lord Mansfield, one of the little band of trusty friends who now resolved to take a determined stand. Ludlow, who had been in Paris and witnessed the situation of the *associations ouvrières*, returned with an enthusiasm for the co-operative workshops, and found no difficulty in winning Maurice over to his views, thus gaining for himself the credit of initiating the practical movement. A dinner had been given at Ludlow's in December, 1849, at which the plan was formulated. It was decided to issue a number of pamphlets,[2] and it was then that the

[1] Jan. 1850, Labor and the Poor, reprinted as nos. 3 and 4 of Tracts by Christian Socialists (a series which followed the Tracts on Christian Socialism). *Cf.* p. 6 for the affecting testimony of the young girls driven into prostitution through want.

[2] The following were the Tracts on Christian Socialism:

No. 1. Dialogue between Somebody (a person of respectability) and Nobody (the writer).

No. 2. History of the Working Tailors' Association.

No. 3. What Christian Socialism has to do with the Question at present agitating the Church.

No. 4. The Working Associations of Paris.

No. 5. The Society for promoting Workingmen's Associations.

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name Christian Socialism was adopted. "That is the only title which will define our object and will commit us at once to the conflict we must engage in sooner or later with the unsocial Christians and the unchristian Socialists."[1] And yet it was not without some misgivings. Vansittart Neale, then a young man, and to-day still the soul of the co-operative movement in England, expressed his dislike of the name as tending to alienate many would-be supporters, but the objection, although doubtless well founded, was overruled.[2]

Maurice wrote the first tract, in which he asserts that any one who recognizes the principles of co-operation as stronger and truer than those of competition, is justly called a socialist, and admits that the adherents of Owen, Fourier, Louis Blanc, *etc.*, fall within this definition. In later tracts he completely refutes Owen's views of circumstances, and discusses the relation between socialism and the church. Thousands of copies were struck off and widely distributed. But mere words were not enough. A few hundred pounds were raised, the friends rented a house in Great Castle Street, took a mortgage on the premises, and the Working Tailors' Association was started, with twelve tailors, under the leadership of Walter Cooper, the ex-Chartist. All moneys loaned were to be repaid into a fund to enable other societies to spring into existence. Wages were proportioned according to work and talents, but the profits were equally divided, provided that each man did his utmost, the ultimate decision being placed in the hands of the workmen themselves.[3] Men of other trades saw that here was a way out of their difficulties, and applied for similar aid; and as a result, the Society

No. 6. Prevailing Idolatries or Hints for Political Economists.

No. 7. A Dialogue between A and B, two clergymen, on the Doctrine of Circumstances, as it affects priests and people.

No. 8. A Clergyman's Answer to the Question, "On what grounds can you associate with men generally?"

Maurice wrote nos. 1, 3, 7, 8; Ludlow, nos. 4, 6; Hughes, no. 2.

[1] Life of Maurice, II., 34. The name had first been used in Owen's *New Moral World*, Nov. 7, 1840, in a letter signed, Joseph Squiers, Coventry. Several societies of Christian Co-operators had however existed in 1830.

[2] *Cf.* remarks in Holyoake, History of Co-operation, II., 390.

[3] Report of Committee . . . on savings of the middle and working classes, p. 56.

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for promoting Workingmen's Associations[1] was established in February, 1850, the friends, together with a few workmen, forming the "council of promoters" which met weekly at Maurice's house. Soon other associations were started, until they reached the number of seventeen in London alone, while the movement spread to the provincial cities, until finally a central board was formed with delegates from all the societies, and not much later the central co-operative agency was inaugurated, a pioneer and forerunner of the wholesale society which to-day transacts an immense business with over one thousand associations throughout England.[2]

Thus for a second time socialism had identified itself with co-operation. But to the Christian Socialists co-operation was the quintessence of principles inculcated by the church, the destroyer of that competition which they regarded as an unhallowed warfare. "Competition," said Maurice, "is put forth as the law of the universe. That is a lie. The time is come to declare that it is a lie, by word and deed. I see no way but by associating for work instead of for strikes." Kingsley maintained that not self-interest, but self-sacrifice, was the only law upon which human society could be grounded with any hope of success. "That self-interest is a law of human nature, I know well. That it ought to be the root-law of human society, I deny, unless society is to sink down again into a Roman empire and a cage of wild beasts."[3] The enthusiasm of the promoters was unbounded. Thomas Hughes thought (and still thinks to-day) that they had found the solution of the labor question; but at that time he was also convinced that "we had nothing to do but just to announce it and found an association or two, in order to convert all England and usher in the millennium at once, so plain did the whole thing seem."[4] And the majority of the promoters were equally sanguine. Their success, indeed, was at first phenomenal. Kingsley had emphasized the fact

[1] In the tract defining its objects, it was prescribed that none of the associations should ever be made the instrument or agent of political agitation. This strikes the keynote of their policy. Tracts on Christian Socialism, no. 5.

[2] Ackland and Jones, Workingmen Co-operators, ch. 4.

[3] Letters, II., 37.

[4] Memoir of a Brother, p. 111.

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that it was by securing custom, far more than by gifts or loans of money, that the nobility could help the operatives;[1] and this indeed took place. The members of the original association soon tripled in number, and the outlook appeared most favorable. The laborers themselves were astonished to find that members of the upper classes sympathized with them; "the opinion has been that we are simply to be used as so many machines, and then to be thrown off when not needed, and that the other classes cared nothing about us."[2]

During the autumn of 1850, Walter Cooper had made two tours through the northern counties, diffusing the principles of productive co-operation. In January, Maurice, Hughes and Lees started out on a similar journey, and met with signal success, for the idea was eagerly adopted in many large towns — Manchester, Southampton, and others.[3] The promoters, moreover, were astonished to find how many societies had preserved their existence from the Owenite epoch, and as a result of the impulse given by the Rochdale pioneers in 1844. Maurice was still the life of the movement, and every incipient society applied to the promoters for information and aid, although they often found it difficult to harmonize conflicting views and to extirpate the "dividing, godless, warring tendencies" in each heart. But they now experienced the necessity of some organ to voice their sentiments in a more continuous and permanent shape; and in the autumn of 1850, the publication of *The Christian Socialist*, a weekly under the editorship of Ludlow, was undertaken with about the same body of eminent contributors as its predecessor. In this most remarkable journal, the motives of the founders are most clearly expressed:

A new idea has gone abroad into the world. That Socialism, the latest-born of the forces now at work in modern society, and Christianity, the eldest-born of those forces, are in their nature not hostile, but akin to each other; or rather, that the one is but the development, the

[1] Cheap Clothes and Nasty, p. 107 of reprint.

[2] Report of the select committee, *etc.*, p. 54. Testimony of Walter Cooper.

[3] Even in America the impulse was felt, and Associative Unions were started. Ludlow, Labor and the Poor, p. 16; *The Christian Socialist*, I., 45, *etc.*

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outgrowth, the manifestation of the other. . . . That Christianity, however feeble and torpid it may seem to many just now, is truly but as an eagle at moult; that Socialism is but its livery of the nineteenth century, which it is even now putting on, to spread erelong its wings for a broader and heavenlier flight. That Socialism without Christianity, on the one hand, was lifeless as the feathers without the bird, however skilfully the stuffer may dress them up into an artificial semblance of life. That every socialist system which has maintained itself, has stood upon the moral grounds of righteousness, self-sacrifice, mutual affection, and common brotherhood. . . . That Christianity, on the other hand, in this nineteenth century of ours, becomes in its turn chilly and helpless when stripped of its social influences; or, in other words, when divorced from Socialism. . . . That if the Gospel speaks true, and "ye cannot serve God and Mammon," it is wholly incompatible with a political economy which proclaims self-interest to be the very pivot of social action; . . . but that it is compatible with those theories or systems which have for a common object to bind up into fellowship, and not to divide by selfishness and rivalry; to substitute fair prices and living wages for a false cheapness, and starvation, its child; and which have adopted for their watchwords *Association* and *Exchange* instead of *Competition* and *Profit*. . . . If it be given us to vindicate for Christianity its true authority over the realms of industry and trade, for Socialism its true character as the great Christian revolution of the nineteenth century, so that the title of Socialist shall be only a bugbear to the idle and to the wicked, and society from the highest rank to the lowest shall avowedly regulate itself upon the principle of co-operation, and not drift rudderless upon the sea of competition, as our let-alone political economists would have it do — then, indeed, we shall have achieved our task; and no amount of obloquy, ridicule, calumny, neglect, shall make us desert it, so long as we have strength and means to carry on the fight. For a fight it is; and a long one, and a deadly one — a fight against all the armies of Mammon.[1]

Kingsley had previously written *The Saint's Tragedy*, in which he touched upon some weak features of the prevalent political economy,[2] as well as the novel *Yeast*, in which the misery

[1] The New Idea, by Ludlow, *The Christian Socialist*, vol. i., no. 1, Nov. 2, 1850; *cf.* My Political Creed, by Parson Lot, in vol. i., p. 50.

[2] Act ii., scene 9. — There were several workmen-poets connected with the movement, as Thomas Cooper, the author of Purgatory of Suicides (cousin of Walter Cooper, the tailor), and Gerald Massey, who wrote the Ballad of Babe Christabel, and who was secretary of the Working Tailors' Association. *Cf.* his poems, *etc.*, in *The Christian Socialist*, I., 48, II., 140. England has had many other workmen-poets, as, *e.g.*, Samuel Bamford the radical, Willie Thorn and John Crichley Prince the

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and aspirations of the agricultural laborers were well portrayed. Now, however, he published his famous *Alton Locke*, the fictitious biography of a tailor-poet who works himself up from a position of lowly surroundings; and I would advise all who profess sympathy with the oppressed, who need quickening inspirations from noble thoughts, who desire emancipation from petty social prejudices, who wish to see formulated the better impulses of sturdy workmen, to take up this book, instinct with poetic fervor, and full of passionate enthusiasm. It is the best text-book of Christian Socialism, and contains the most scathing denunciations of upper-class indifference. But it appeared at a time when a storm of vituperation and abuse burst on Parson Lot and his fellow-workers. "Tracts full of raving and disreputable rant; mouthpieces of class-selfishness, popular prejudice and ignorant passion; ravings of blasphemy, rapine and nonsense; miserable delusions; mischievous provocations clothed in oily phrases of peace and charity; a clique of wayward-minded men who, from a morbid craving for notoriety or a crazy straining after paradox, have taken up the unhallowed task of preaching the doctrines of Jacobinism and the Jacquerie" — this and much more of the like was said of them in all the reviews and journals.[1] Advertisements were refused by the daily papers, booksellers did not dare to keep copies of their publications, and *The Christian Socialist* was prohibited by the French government from circulating in the realm. A committee of King's College was appointed to investigate Maurice's activity in these dangerous schemes, and he narrowly escaped losing his professorial position. Kingsley was invited to deliver a sermon[2] in a London church, and at the close, his

weaver poets, and Will Whitmore, the author of Gilbert Marlowe. *Cf. Workingmen's College Magazine*, I., 143.

[1] *Cf.* especially an article by Greg, English Socialism and Communistic Associations, *Edinburgh Review*, Jan., 1851; J. W. Croker, Revolutionary Literature, *Quarterly Review*, Sept., 1851; Holyoake (who has since recognized their merits) in *The Reasoner; The Inquirer*, April 19, 1851; *The Eclectic*, vol. 23, p. 508.

[2] The Message of the Church to the Laboring-men. The closing words were as follows:

"All systems of society which favor the accumulation of capital in a few hands, which oust the masses from the soil which their forefathers possessed of old, which

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opinions were openly branded as untrue and dangerous by the officiating rector, Mr. Drew. Replies were made to the strictures in dignified, trenchant articles, showing that this was a crusade not of violence, but against violence, not of revolution, but of reform.[1] One attack, however, of an extremely bitter nature, accusing the author of *Yeast* of purposely inculcating profligacy, was met by Kingsley as follows: "If you or any man impute to me these offences, I will answer you as was answered to the Jesuit of old — *mentiris impudentissime.*" Perhaps the best purely economic reply was that of Ludlow, whose lecture displayed an intimate acquaintance with economic literature, and met the economists on their own ground. Here for the first time do we find a successful refutation of the wages-fund theory, which was not finally abandoned by the English economists until the last decade. Ludlow calls attention to the human element in the relation of capital and labor, as materially affecting the law of supply and demand; he asserts that a cheapness which starves the producer is as absurd as a dearness which deters the consumer — an argument which, by the way, can be found already in the works of Boisguillebert and Turgot. Finally he attempts, although not with complete success, to answer the objection that in case there are many associations, you retain all the evils of competition; in case they are all merged into one, you encounter all the evils of monopoly. Ludlow confessed that it would result in a monopoly, but it would be a monopoly of order and justice, not of disorder and injustice. The monopoly they were seeking was one which, instead of narrowing, sought only to extend its circle, and would

reduce them to the state of serfs and day-laborers living on wages and alms, which crush them down with debt or in any wise degrade or enslave them, or deny them a permanent stake in the commonwealth, are contrary to the kingdom of God. . . . Woe unto you that add house to house and field to field, till there be no room left. Woe unto you that are full, for you have received your consolation already. Woe unto you who make a few rich to make many poor. Woe unto you that make merchandise out of the needs of your brethren."

[1] Kingsley, Who are the Friends of Order? 1852; and the articles of Furnival, Maurice, Ludlow, *et al.*, in *The Christian Socialist*, I., 98, 114, 122, 130, 227, 257; II., 17.

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not cease widening until it had taken in the whole world[1] — a project which we must declare to-day to be rather over-idealistic.

In fact, it cannot be denied that the perhaps justifiable indignation of the friends against the prevailing economic doctrines led them into a too vehement opposition. There is no doubt that their at times passionate indiscretion repelled many who were at heart in sympathy in the movement. In denouncing unrestricted competition, and the economic doctrine of "every man for himself," it was quite unnecessary to speak of the whole system of trade as the "disgusting vice of shop-keeping."[2] The economists were termed by many of them superficial and supercilious plutonomists; while others spoke of that ape-like snatching from one another which we call competition, but which is the anti-social, disintegrating, destructive principle. Men are not apes, said they, and it is but apes' jabber to tell them that competition is the law of the universe.[3] Such language was perhaps excusable in the face of those who held that absolute *laissez faire* would bring about a harmony of interests, a state of universal bliss, and who euphuistically called their political economy "benevolence under the guidance of science";[4] and it is beyond cavil that the arguments of the friends ultimately produced a veering round in public sentiment. But a sober scientific judgment must convict them of exaggeration. Free competition is not all good, nor is it all bad. It has called forth all the self-reliant individual energy to which the marvellous growth of our present civilization is due; it has served as the spur to progress and has equalized many a hardship. On the other hand, it has worked much injustice, and given rise to untold abuses; it has intensified the advantages of the strong and unscrupulous in the conflict with the weak and honorable; it has proved itself incapable in many instances of satisfactorily solving the great problems of our complex industrial society.

[1] Christian Socialism and its Opponents. The substance of the lecture is reprinted in *The Christian Socialist*, Feb. 22, 1851.

[2] *Cf.* the remarks of Hughes, Memoir of a Brother, p. 114.

[3] *The Christian Socialist*, II., 34; *The Spectator*, vol. 57, p. 1339.

[4] *Edinburgh Review*, Jan. 15, 1851, p. 9.

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But competition is not such a failure as to warrant the demand of its utter annihilation, whether by the collectivists or the co-operative socialists. It is a legitimate principle of modern economic life, whose shortcomings may here and there be compulsorily remedied, but which must still remain the predominant characteristic of social relations. The old extremists erred in absolutely denying that it had any shortcomings, the Christian Socialists erred in desiring to supplant it entirely and immediately. Both were wrong; and it is the province of modern economics to mark out the lines of delimitation between their respective demands.

The legal members of the council of promoters had already for some time been striving for a change in the law of partnership which would afford the co-operative societies an adequate protection. The character of English legislation up to that time had been anything but favorable to independent action on the part of the workmen; and co-operation was as yet illegal, or at least beyond the law. After the report of Slaney's parliamentary committee in 1850, before which J. S. Mill had spoken an earnest word in behalf of the scheme,[1] Ludlow drafted a bill afterwards settled in conjunction with Hughes and Neale; but it required two years of determined and strenuous effort before their object was finally attained by the act of June 11, 1852, which has been called the *magna charta* of co-operative trade and industry — the first law in the civilized world that recognized and protected co-operative societies as separate entities.[2]

The remainder of the work can be told in a few words. In January, 1852, *The Christian Socialist* was replaced by *The Jour-*

[1] "I think there is no way in which the working classes can make so beneficial a use of their savings, both to themselves and to society, as by the formation of associations to carry on the business with which they are acquainted, and in which they are themselves engaged as workpeople," *etc.*, pp. 71–81 of Report. Mill was prevented from joining the movement only on account of its specifically Christian character.

[2] The Industrial and Provident Partnerships Act, June 11, 1852, 15 and 16 Vict. c. 31, applying to all occupations except mining and quarrying abroad, and banking. The present law is that of 1876, 39 and 40 Vict. c. 45. *Cf.* Ludlow and Jones, Progress of the Working Classes, p. 48. In a letter to me, Mr. Ludlow writes that there would probably have been serious opposition to the bill had any other name been adopted.

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nal of Association, which Hughes undertook to edit, and which now dropped all articles of a political or general nature, and devoted itself wholly to the cause of co-operation. The society modified its name to accord with the new law, and was henceforth known as the Association for promoting Industrial and Provident Societies, the new constitution formulating its principles as follows: 1. That human society is a body consisting of many members, not a collection of warring atoms. 2. That true workmen must be fellow-workers, not rivals. 3. That a principle of justice, not of selfishness, must govern exchanges.[1] At the time of the great strike and lock-out of the amalgamated society of engineers in 1852, the friends sturdily opposed the current of abuse and calumny that threatened to engulf the laborers, and by their letters to the *Times* succeeded in bringing about a more temperate view of the real aims of the trades-unions, thus materially contributing to their advance. The conferences with the artisans were still carried on, and the cause of co-operation in the country districts was greatly strengthened. Annual congresses were held in London, Manchester, Leeds and other cities, and as a result of their activity so-called labor-redemption societies were formed in Leeds and Bury, which maintained the principle that the workmen must become "laboring capitalists."[2] But toward the close of 1853 the difficulties, inherent in every scheme of co-operation, made themselves apparent, and the productive societies in London began to decline; several were robbed by their treasurers; others suffered from a jealous dissension of the members, and the spirit of envy and indifference began to supplant that of fraternal love and mutual toleration. One of the members of the general association, Jules Chevalier,[3] initiated a rival movement of

[1] Hughes, History and Objects of Co-operation, p. 13. The number of members was now seventy, among them seven lawyers, seven ministers, two M. P.'s, and two peers (Viscount Goderich and Lord Montagu). *Cf.* Huber, Reisebriefe, II., 171.

[2] *Cf.* for their principles, and the projected "fourteen days propagandism," *The Christian Socialist*, I., 54; II., 41.

[3] Jules Chevalier St. André, a French refugee, and called by Maurice a clever sharper, Life, II., 549. But see Huber, *Reisebriefe*, II., 168, for a more favorable account.

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his own, and thus hastened the frustration of the original plans. The remaining societies were still supported by the large-hearted generosity of Vansittart Neale, but even his purse was soon emptied. Maurice and his friends felt that the impulse had been given, that they were not competent to carry on the practical details, but might, on the contrary, mar the cause grievously by continuing to meddle with the strictly commercial part of the movement. Neale and the Co-operative League, moreover, had occupied, to some extent, the ground originally taken by the promoters.

It was accordingly decided to establish an institution in which the workmen should gradually be educated to a higher and nobler conception of their social relations. The organization was finally perfected, according to a plan of Maurice,[1] and, early in 1854, the nucleus of teachers for the Workingmen's College was obtained, which counted among its lecturers in that and the following years, some of the most distinguished names in English science and literature.[2] The promoters devoted all their enthusiasm to the prosecution of this scheme, and the co-operative movement in London consequently languished. Instruction was given in all the higher as well as the elementary branches, a periodical was published devoted to its interests,[3] and to-day the college still exists as one of London's most prosperous and beneficent institutions, recruiting the staff of instructors largely from its former pupils, and serving as a bright model to the numerous academies of a similar character, that have sprung up in English towns.[4]

[1] Reprinted in *The Workingmen's College Magazine*, II., 146 *et seq.*

[2] Ruskin, Dante Rosetti, Alex. Munroe, Fitz-James Stephens, Frederick Harrison, Sheldon Amos, Grant-Duff, Pearson, Brewer, the Lushingtons, Westlake, Brodribb, Huxley, Tyndall, Spottiswoode, etc. *Cf.* Reports of the Workingmen's College. The college bore some resemblance to the People's College established in Sheffield in 1842 by a dissenting minister, Mr. Bayley. For its history, by Rowbotham, see *Workingmen's College Magazine*, I., nos. 4 and 6. The history of the London College itself is told by Furnival, *ibid.*, II., 144, 165, 188.

[3] *The Workingmen's College Magazine*, 1859–1861, edited first by Ludlow, afterwards by Litchfield.

[4] Ludlow and Jones, Progress of the Working Classes, p. 178; Maurice, The Workman and the Franchise, at end. The colleges of Salford, Manchester, Ancoats, Wolverhampton, Cambridge, Halifax, Boston, Ayr, are described in the *College Magazine*, I., 17, 21, 41, 51, 53, 101; II., 82.; III., 101.

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The friends in later years worked with unflagging zeal in the interests of the workmen; Maurice and Kingsley in their clerical careers never failed to utter words of cheering import; Ludlow wielded his powerful pen in defence of the operatives, and is to-day registrar of the friendly societies; Hughes and Neale are still the staunch supporters of co-operation in England, and preserve the ideal element that has continued to characterize the movement to the present day;[1] but the Christian Socialist movement, as an episode of the national life, practically ended in 1855.

In these seven years of energetic activity a great transformation had been effected. The Christian Socialists had indeed failed to achieve the practical object they had set themselves; the seventeen productive societies in London had all vanished, and the co-operative stores in the country were upheld only by the success of the Rochdale pioneers. Society was still far from conforming to the ideal of true love and fraternity for which Maurice and his followers had so earnestly striven. Kingsley confessed that the associations were a failure because the workingmen were not fit for them,[2] and Vansittart Neale in a letter to me says:

> Individually, the only matter that I regret in respect to my connection with this movement, is that I was in too great a hurry. Led away by the enthusiasm produced by the efforts of the Parisian workers to raise themselves by their united efforts, I advanced considerable sums to various bodies of workers, who were to have all the profits of their work after paying three per cent on the capital; but had the misfortune of losing the capital without having succeeded in setting up one society which lived; and, in consequence, only crippled my own power without benefiting permanently those whom I desired to benefit.[3]

[1] In a letter to the writer, Mr. Hughes says: "The man here who holds the ropes (may he long do so!) is Mr. Vansittart Neale. . . . He is the finest instance I know of a highly cultivated gentleman absolutely devoting himself to the greatest cause of our time, without a hope of reward in fame or wealth of any kind." Not much less praise is due to Mr. Hughes himself. In the Manual for Co-operators, pp. 1–72, 154–169, Hughes and Neale have again lately discussed the subject from their old standpoint.

[2] Letters, II., 35.

[3] Mr. Neale believes that Godin's establishment at Guise offers the best solution of the problem for the present day.

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And yet much had been accomplished indirectly. Legislative reform had been initiated in the face of bitter opposition, and the ultimate success of co-operation was no longer imperilled by a legal environment which had made all previous attempts so futile. Public sentiment had been aroused by the combined onset of such a singularly brilliant body of authors, and the attitude of the reviewers and the higher classes in general had changed from one of contumely and obloquy to that of respectful appreciation and even approbation. One of their former severe opponents now thought that the associations might become one of the most powerful influences working for the education of the lower orders of the people; and the general effect of the controversy was to convince the public that the movement was neither revolutionary nor dangerous, but calculated to open a future for the working classes such as they had hitherto scarcely dreamt of.[1] Mr. Ludlow writes to me:

> I do not think it is for me to say how far Christian Socialism has or has not been a success. I believe I can see its influence working far and wide — and not in this country only — in many who are quite unconscious of the fact. All I would say is that it is a mistake to look upon Christian Socialism as a mere historical event or series of facts. It was a leaven — that is, as modern science teaches us, a living germ — capable of reproduction *ad infinitum*.

But above all, their repeated attacks on the exaggerations of the orthodox economists, and their demonstration of the untenableness of a system based on the assumption of natural laws as an outcome of the principles of self-interest, gradually produced a revulsion of feeling and a sense of growing dissatisfaction with the doctrines of the Manchester school, which finally culminated, only a few years ago, in their complete rejection by the English scientists. The economists, with the honorable exception of Mill, had regarded the movement as hopeless, inadequate and utterly erroneous; for the past ten years there is scarcely an English economist of note who has not become convinced of its ultimate practicability and its undeniable value in helping to

[1] Investments for the Working Classes (by W. R. Greg), *Edinburgh Review* for April, 1852, p. 413. *Cf.* Hughes, History and Objects of Co-operation, p. 16.

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solve present burning problems. The London associations have disappeared, but the efforts of the Christian Socialists remain apparent in the momentum given to the growth of the country societies, which have gradually developed into a huge network of unions throughout the kingdom. But for the Christian Socialists and their vigorous advocacy, the cause of co-operation would to-day be far less hopeful, far less beneficent.

Owen and the Christian Socialists thus each performed a great work, both negative and positive, even though their practical schemes, with few exceptions, failed of any direct success. Positively, they succeeded in moulding the views of their generation, in producing a spirit of greater toleration, in combating the patent evils and abuses of an unrestricted competition, in deprecating the further continuance of such an unhallowed industrial warfare, in stimulating the energies of apathetic legislators and in inciting them to supply defects in the laws which affected the status of the laboring classes. Negatively, they exerted an incalculable influence in preventing outbreaks of class hatred and dissipating the feelings of imagined superiority or sullen resentment; in recalling to each the sense of mutual obligation, and insisting on the maintenance of order; in spreading the gospel of fraternity and peace, and deriding the thought that mere legislative reform would suffice to regenerate society. They started from essentially different premises, and yet, in some respects, reached identical conclusions. From the state they demanded very little that militated against the commonly accepted notions. The state socialism of the present day would have seemed to them absurd and utterly futile, for voluntary, not compulsory, organization was their watchword, peace and good will to all, their battle cry. Owen was a rationalist, but not a materialist. Maurice and Kingsley were Christians, but their Christianity was a liberal humanitarianism, the ultimate result of which must be, as they said, to merge the present distinctions of theology in the unity of a moral life; a catholic faith which includes in its folds all those who, whether repudiating the name of Christians or not, are actuated by a

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spirit that makes social reform possible. Owen was a visionary, one-sided enthusiast; the Christian Socialists were broad-minded and full of scientific ability. Owen was a communist, and later a spiritualist; Maurice and Kingsley insisted on the right of property as well as on the duties of proprietors. Owen dabbled in economics and made laughable failures; the others were careful in their experiments, and often content with the enunciation of new principles. Owen believed that the result at which he aimed could be reached by advocating the quintessence of ethics taught by all great religious teachers; the Christian Socialists held more firmly to the doctrines of the church. But all finally reached the same standpoint: "Whatsoever ye would that men should do to you, do ye even so to them."

English Socialism, as exemplified in these two great phases, thus possesses three distinguishing characteristics: opposition to violence, refusal of state-help, enthusiasm for co-operation. The first feature — the insistence on the necessity of reform rather than of revolution — is owing to the fact that the leaders were neither demagogues nor sciolists. Their systems were based on a philosophy, but in each case it was a philosophy of love and toleration — an optimism which though not blind to existing defects, yet firmly held that the good in human nature would ultimately overpower the bad — a conviction that mob force and passionate recrimination would be impotent to bring about a harmony of interests, and that distrust and hatred could not possibly engender confidence and satisfaction.

Secondly, they resolutely set their faces against undue reliance on governmental intervention; and in this they showed their sturdy English independence. Not that they were advocates of the *laissez-faire* Manchester doctrine; on the contrary, they repudiated with vehemence the absolute sufficiency of self-interest. The epithet Socialist would otherwise be an unmeaning abstraction, utterly inapplicable to their case. They demanded an exercise of the police power which should prevent disregard of health and decency, and which should adequately protect the industrial population from the flagrant abuses of the

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factory system. But they desired no undue compulsion; they foresaw that the habit of calling upon the state in every emergency would sap the foundations of manly initiative; they preferred to regenerate society from within, not from without, and to put their trust in the spontaneous action of groups voluntarily and earnestly working for a common end.

Finally, they effectually promoted the cause of co-operation, both productive and distributive. Starting from different standpoints, they all reached the same conclusion, that combination, and not competition, was to become the keynote of the new order. They doubtless charged the competitive system with much that cannot with justice be laid at its doors; they assailed existing methods with purely ethical arguments; their sympathetic indignation often led them to overstep the limits of just criticism. Owen was far too extravagant in his conception of co-operation, which he wished to see practised in every sphere of human activity; the Christian Socialists centred their attention on the productive societies, but erred in regarding the system as in all respects the necessary antagonist of present methods, and were utterly mistaken in believing that its adoption would completely abolish all competition. But the English Socialists first advanced the cardinal truth, the fruitful idea, that if the workmen wish to take part in the profits of capital and thus gain their share in the growth of national opulence, they must do so by undertaking the functions of capital, by merging their individual possessions into a common stock, and by choosing among themselves the "captains of industry." Trades-unions have done much and will no doubt accomplish far more in the gradual elevation of the working classes; but their sphere is circumscribed by the very conditions of the problem. They are composed of workmen, and as workmen pure and simple the lot of the artisans cannot be materially altered. An effectual improvement can only be produced by some method which will ensure to the laborers a practical independence, which will lift them as a body out of their position as subordinates, and make them feel that they are all equally responsible for the evil, equally benefited by the good that may result from

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their united efforts. This the system of industrial co-operation —whether it prove the ultimate solution of the problem or not— can achieve; this in spite of temporary failures and premature attempts it may one day realize; and this, when accomplished, will ever be regarded as the outgrowth of an idea for which we must above all thank the English Socialists.

EDWIN R. A. SELIGMAN.

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THE LEGAL TENDER QUESTION.

THE surprise with which the decision of the United States Supreme Court in the case of Juilliard *vs.* Greenman[1] was received, heightened into indignation by the newspaper criticisms upon misleading quotations from the opinion of Mr. Justice Gray, and the general refusal of jurists to accept a doctrine supposed to have been enunciated in that opinion, have culminated in the publication of an essay by a great historian denouncing this supposed doctrine. *A Plea for the Constitution of the United States, wounded in the House of its Guardians*,[2] by George Bancroft, has been generally received as a valuable contribution to the solution of the economic and legal questions arising out of the issuing of legal tender notes by the United States government. I believe it to be a mistaken plea; mistaken, because unnecessary. I do not wish for an instant to be ranked as a believer in the policy of government finance which favors a forced currency; that is a question which concerns not the courts, but Congress; and as an appeal to Congress in favor of honest money, the first forty pages of Mr. Bancroft's work will forever stand, clear and crushing, a great plea for a great cause. Will Congress heed? Ask history; read the accounts of recent wars; investigate the actions of other legislatures and other nations; and the only answer is, in the words of a great French economist: "Recent history proves that a forced currency is almost inevitable in time of war."[3] Wisely or not, when a nation finds its weekly expenditures approaching its annual income, it has resorted in the past, and will resort, I believe, in the proximate future, to fictitious methods of finance. An evil? Yes;[4] but so are ships of war.

[1] 110 U. S. Reports, 421. [2] New York, Harper & Brothers, 1886.

[3] Leroy-Beaulieu, Traité de la Science des Finances, vol. ii., p. 685.

[4] But Leroy-Beaulieu does not consider it necessarily an evil. "Le cours forcé est ainsi devenu un des grands moyens de crédit des nations modernes. . . . Il est des

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But this *Plea for the Constitution* is addressed to the Supreme Court, and deals with a question of deeper significance than any matter of finance or economy — a question which concerns the fundamental principles of our constitutional law. Mr. Bancroft finds in the decision an assumption that "apart from the grants by the constitution, the United States has powers as a sovereign government."[1] "The opinion," he says, "clothes the government with powers that have no defined limit in its relations to the people";[2] and elsewhere he declares that the court "insists that the United States possess 'the powers belonging to sovereignty in other civilized nations, and not expressly withheld from Congress by the constitution.'"[3] Such is not, I think, the meaning of the decision; nor can any such assertion be wrung from the opinion save by separating certain passages from their context and thus entirely altering their significance. The very fact that the opinion contains a somewhat startling reference to the "usage of sovereign governments," and another to "sovereignty in other civilized nations," should have caused so careful a writer to examine closely the reason for the introduction of these phrases. Let us do so.

The question before the court was, in its briefest but most confusing form: *May the United States constitutionally issue legal tender notes?* The court, of course, knew that Congress can do nothing not permitted, expressly or impliedly, by the constitution; and that it was not expressly permitted to issue legal tender notes. So the question became this: *Is Congress impliedly permitted to authorize the issue of legal tender notes?* But again, the court knew that certain express grants may be

circonstances où l'on peut même soutenir qu'il a rendu plus de services que causé de préjudices." Traité, *etc.*, vol. ii., p. 613. — "Dans certains cas, pendant une grande guerre, le cours forcé peut avoir de grands avantages." *Ibid.*, p. 619. — "Il serait puéril de pretendre que le cours forcé soit inutile à une puissance qui entre en guerre." *Ibid.*, p. 663. — "L'histoire récente prouve que le cours forcé est presque inévitable en temps de guerre: on peut presque affirmer que l'on ne verra pas un grand peuple entrer dans une lutte où sa destinée est en question, sans proclamer le cours forcé des billets d'État ou des billets de banque." *Ibid.*, p. 685.

Will not some one give us the results of an investigation of the question which shall decide between M. Leroy-Beaulieu and the more orthodox — or more superficial — economists?

[1] Bancroft, A Plea, *etc.*, p. 60. [2] *Ibid.*, p. 6. [3] *Ibid.*, p. 53.

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construed to relate to this subject; and that, as stated by Chief-Justice Marshall, Congress, in executing these express grants, may use "all the means which are plainly adapted . . . which are not prohibited, but consist with the letter and spirit of the constitution."[1] So the question had to be lengthened and simplified into the following: *Are legal tender notes a means plainly adapted, not prohibited, consistent with the constitution, for executing certain powers expressly granted to Congress?*

Of these express grants of power, the most apposite was that of borrowing money. The court had previously argued that this was a means of, or an assistance to, borrowing money; but upon this point economists differed. Some said the notes would have been just as useful in borrowing money without the legal tender quality; others, on the contrary, that the notes could not have been floated without it. As to this purely economic question the court probably was in doubt; and it turned to the history of Europe for assistance. What had other nations — admittedly no more sovereign than ours in regard to powers expressly granted to ours — done when they wished properly to execute these powers, and especially this power "to borrow money"? A most natural inquiry, surely; and its investigation led the court to answer the great question before it (properly put only in the last of the above italicized forms) in these words:

> Congress, as the legislature of a sovereign nation, being expressly empowered by the constitution "to lay and collect taxes, to pay the debts and provide for the common defense and general welfare of the United States," and "to borrow money on the credit of the United States," and "to coin money and regulate the value thereof and of foreign coin"; and being clearly authorized, as incidental to these great powers, to emit bills of credit, to charter national banks, and to provide a national currency for the whole people, in the form of coin, treasury notes, and national bank bills; and the power to make the notes of the government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized nations, and not expressly withheld from Congress by the constitution; we are irresistibly impelled to the conclusion that the impressing upon the treasury notes

[1] 4 Wheaton, 421.

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of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of undoubted powers of Congress, consistent with the letter and spirit of the constitution, and therefore, within the meaning of that instrument, "necessary and proper for carrying into execution the powers vested by this constitution in the government of the United States."

This sentence, taken in its entirety, contains nothing "revolutionary"; it is only by cutting away the first half and the last third of it that the disjointed remainder can seem to "clothe the government with powers that have no defined limit." The entire sentence, analyzed, cites first, and as a basis for the remainder of the argument, certain powers given to Congress by the constitution, expressly; secondly, certain means of executing these powers which had already been used and approved; and thirdly, another means used by other nations — no more sovereign than ours as regards these express grants — for executing these same powers; and then the court says that this last power, the issue of legal tender notes, is — an attribute of sovereignty? An inherent power? Not at all — is "an appropriate means, . . . adapted to the execution of undoubted powers of Congress"; *viz.*, the powers just quoted from the constitution itself. Is this a blow at the constitution? Is it not, on the contrary, the "lighting of the candle at the primal light" which Mr. Bancroft demands?

The other sentences which Mr. Bancroft quotes from the opinion, have, when read with their context, the same significance as the passage already examined. We find in each case careful reference to the constitution for granted powers, and the justification of the disputed power as an appropriate means of executing the granted powers. The decision, at bottom, is but a reaffirmation of the words of Marshall, before referred to:

> Let the *end* be legitimate; let it be within the scope of the constitution, and all the *means* which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.[1]

[1] 4 Wheaton, 421.

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Is the use of the word "sovereignty" objected to? Let us go back sixty years, and read from a case reported in 1 Peters, 511. On page 546, Chief-Justice Marshall says:

> The judges of the superior courts of Florida hold their offices for four years. These courts, then, are not constitutional courts. They are legislative courts, created in virtue of the *general right of sovereignty* which exists in the government; or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory of the United States.

This decision was rendered in 1828. These exact words occur not only in the body of the decision, but also, to make them more prominent and noticeable, in the head-note of the case; and, so far as I know, this decision has never been overruled, criticized, or even questioned. On the contrary, it was expressly affirmed and approved in 9 Howard, 235 (1850), and in 13 Wallace, 434 (1871).

Mr. Bancroft arraigns the court upon another point; he denies that "the power of impressing upon bills, or notes, of the government for money borrowed the quality of being a legal tender for the payment of private debts was a power universally understood to belong to sovereignty in Europe and America at the time of the framing and adoption of the constitution of the United States." [1]

But as to this, Mr. Bancroft's own words are his refutation. Throughout thirty pages he discusses the exercise of this very power by the American colonies — whose governments were not even sovereign, but derived their existence from the home sovereignty. "A statute of 1750 peremptorily forbade the issue of any such paper in New England." [2] This statute was surely an acknowledgment that without such prohibition these governments (of mere delegated powers) could issue forced currency. England, through its Bank, did the same during the Napoleonic wars; and if the power to do so belonged to its sovereignty then, it most certainly belonged to it a few years previously. As to France, Mr. Bancroft supports his assertion that it had not power to issue legal tenders in 1789, by showing

[1] Bancroft, A Plea, *etc.*, pp. 53, 54, 57. [2] *Ibid.*, p. 58.

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that evil effects had followed the exercise of this very power a few years before, and were to follow again a few years later.[1] This is manifestly absurd. It is not a question of policy, or of results, that is under discussion, but purely a question of constitutional powers; or, in this branch of the discussion, a question of the powers of sovereignty in Europe and America, not of the sagacious use of those powers. Mr. Bancroft himself shows that the power existed, although he makes no reference to the custom of the other nations of Europe, in some of which forced currency was a habit amounting to disease.

Mr. Bancroft is unjust in his strictures on the court in other points. He emphasizes the fact that the case of Juilliard *vs.* Greenman was decided "without even hearing or inviting a public argument";[2] but he omits to state that the entire legal tender question had previously been thoroughly argued before the court; and that, in the eighth and twelfth volumes of Wallace's Supreme Court Reports (volumes constantly at the side of the learned justices) were to be found arguments upon the question before the court, covering scores of pages, and embracing the fullest possible discussion of the entire subject. The brief of Mr. Clarkson N. Potter, in the earlier case, contained every possible argument that could be advanced against the constitutionality of the laws, and was printed in full in the reports. Nothing stronger has since appeared, and nothing half so strong would have resulted from the court's "hearing or inviting public argument."

It remains to point out what, under the interpretation which I give to the case of Juilliard *vs.* Greenman, are the distinguishing features of that decision; what new rules or doctrines it projects into our constitutional law.

In the first place, it seems to me to settle forever the question of the constitutionality of legal tender notes. This matter was first argued before the court in 1867.[3] The decision

[1] Bancroft, A Plea, *etc.*, p. 58. [2] *Ibid.*, pp. 6, 77.
[3] Hepburn *vs.* Griswold, 8 Wallace, 603.

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of the court at that time was adverse to the constitutionality of the legal tender notes; but this decision was overruled in 1871;[1] and the present court, having both cases before it, has, by a vote of eight to one, declared that the latter case was correctly decided. This has, therefore, been the law of the land uninterruptedly for fifteen years: it is not probable that either jurists or laymen will induce the court, now almost unanimous, to alter its opinion.

The train of reasoning which has led the court to its latest decision upon this point involves, I conceive, two rules of interpretation which had not previously been adopted. The first is that which impels the court, when construing the constitution, to consider the powers exercised in governing other nations; to refer to the "usage of sovereign governments." If this is an innovation, I consider it a most useful one, if made use of, as in this case, only with regard to powers expressly granted by our constitution. This limitation is, of course, made necessary by the different quality and quantity of the sovereignty inherent in different governments. For the court to draw analogies from the British Parliament's manner of exercising powers of internal police, for example, would be manifestly improper; for our legislative has no such powers; they are not part of its sovereignty, its domain. But analogies drawn from the usage of England, or France, or Hawaii, if you like, will be proper, so long as they concern matters in which our government has the same degree of sovereignty as the government from which they are drawn. I conceive that with regard to powers conferred upon it by the people, through the constitution, there is no government on earth which possesses more perfect sovereignty — that is, more complete power, more absolute domain — than ours. The first rule of interpretation, then, which I deduce from the decision of the case of Juilliard *vs.* Greenman is this:

In considering the means which may be used in the exercise of express constitutional powers, the means used by other governments of equal vigor in the same field may determine the propriety of the means considered.

[1] Legal Tender Cases, 12 Wallace, 457.

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The second rule is of greater importance. Whether it will be followed, at least in the near future, may be considered very doubtful. For fifty years or more we have endeavored to interpret the constitution according to the opinions (so far as these could be ascertained) which its framers held concerning its meaning and effect. Nor has this, until lately, been difficult. The reasonable interpretation of its clauses has usually coincided with these opinions, as we have them in the debates of the convention and in contemporaneous writings.

But there can be little doubt that the framers of the constitution did not intend that the government they were founding should issue legal tender notes. This point may be regarded as settled.[1] In the case of Juilliard *vs.* Greenman, therefore, the court, having by reasonable interpretation found in the constitution words which impliedly authorize legal tender notes, was brought face to face with the question whether the constitution was always to be construed exactly as it was construed a century ago. I am not surprised that in the most crescent, progressive, active nation in the world, the answer was No! And from this answer I deduce a second rule of interpretation:

When a law of Congress is found, by reasonable interpretation, to be a means adapted to the execution of express constitutional powers, it will be held valid, notwithstanding evidence that the use of such means was not contemplated by the framers of the constitution.

It is difficult to discuss the merits of such a rule. The worship of the Fathers, so long our political religion, receives from it a severe shock; though not, by any means, the severest it has received in the last twenty-five years. In the extraordinary development of this country, it would be difficult and dangerous to keep from all development that which should be at the foundation of all advance — the constitution of the national government. Of the three modes in which law is brought into harmony with advancing society, as laid down by Sir Henry

[1] See Bancroft, A Plea, *etc.*, part iii., and the brief of Clarkson N. Potter, Legal Tender Cases, 12 Wallace, 457.

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Maine, one, Equity, is not applicable to our constitution;[1] another, Legislation, is practically useless in most instances, through the difficulty attending amendment; the third, Fiction, would be cut off by a rigid adherence to the ideas of the founders. That those ideas are as utterly inadequate to the solution of the problems now pressing into notice as they were for those of 1861, is, I fear, to be demonstrated in the near future. In the legal tender cases we may perhaps find a principle which will give our constitutional law freedom of motion and the power of advance. From this point of view, the guardians in whose house the constitution has been wounded may after all be wise and trusty, and the wounds such as are inflicted by skilful surgeons — wounds which restore crippled limbs to usefulness and enable the lame to walk.

HARRY HARMON NEILL.

[1] Although the case of Loan Association *vs.* Topeka, 20 Wall., 655, may be considered a step towards this method of development.

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THE RECENT CONSTITUTIONAL CRISIS IN NORWAY.

TO the average cis-Atlantic, Norway is but the land of fjord and viking and saga; and yet within the last decade a political and constitutional revolution of a most practical and instructive character has been accomplishing itself in this *ultima Thule* of the European system. It is still indeed a little premature to essay the exact history of its development. A brief and general sketch of its course may, however, serve to call attention to the movement and to arouse the disposition among historical students for a more minute study of the subject. It may also serve to instruct the general public in that general way necessary to the spread of general information.[1]

The primitive independence of Norway ended with King Hakon V. in 1319. In the absence of direct male heirs, the crown of Norway passed, at that juncture, to Hakon's daughter's son, Magnus, who was at the same time son of King Eric of Sweden and heir to the Swedish throne. At the beginning of this connection, the union of the two kingdoms was only in the

[1] I have had much difficulty in finding satisfactory material for the composition of this paper, and have been compelled to rely, at some points, upon secondary evidence. Most especially do I regret my inability to procure an authentic copy of the report of the trials of the ministers; in want of which I have been obliged to make use of the newspaper reports. Among the journals, I have found the greatest aid from the files of the *Kölnische Zeitung*, whose correspondent in Christiania seems to me to have dealt with the subject in a truly impartial and objective manner. For the aid of students who may desire to verify the statements which I make, or to pursue this study into more detail, I subjoin herewith the sources of my information.

J. E. Sars, Udsigt over det Norske Historie. R. Keyser, Norges Stats- og Retsforfatning. E. C. Otte, Scandinavian History. J. L. Klüber, Acten des Wiener Congresses. G. F. de Martens, Nouveau Recueil de Traités, tome ii. F. W. Ghillany, Diplomatisches Handbuch, Bd. I. A. Rauch, Parlamentarisches Taschenbuch, 1. Lieferung. Annual Register, 1814–1884. Schulthess, Geschichtskalendar, 1865–1884. *Kölnische Zeitung*, 1870–1884. *Christiania Dagblad*, 1880–1884. H. L. Rydin, Unionen och Konungens sanktionsrätt i Norska Grundlagsfragor. Heinrich Martens, Der Norwegische Verfassungskonflikt, im *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirthschaft*, 7. Jahrgang, 4. Heft; 9. Jahrgang, 1. Heft.

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person of the common monarch and was not a consolidation of the political institutions of the two states. As king of Sweden, Magnus had no rights, powers, or prerogatives in Norway, and, *vice versa*, as king of Norway he had none in Sweden. He was, however, a weak personality, and soon proved incapable of administering a political system of such complexity. He sought his way out of such care and difficulty by conferring the government of Sweden upon his son Eric, and that of Norway upon his son Hakon. The early death of Eric, about 1350, brought Sweden under the sovereignty of Hakon VI. and re-established, momentarily, the personal union of the two states. In 1363 the Swedish nobles called Albrecht, Count of Mecklenburg, son of King Magnus' only sister, Euphemia, to expel Magnus and Hakon from power and assume the Swedish crown himself. He accepted the challenge, and in the battle of Enköping, 1365, overthrew his rival and was acknowledged Swedish king. Meanwhile Hakon had married the Princess Margaret of Denmark and opened the way for the union of Denmark with Norway. The plan was consummated in 1380, when, upon the death of Hakon, his son Olaf inherited the two crowns. Olaf was a physical weakling and died before having opportunity to organize his power (1387). His mother was immediately recognized as regent in both kingdoms, and two years later the Swedish nobles thought best to insure their own feudal license by expelling King Albrecht and making Margaret their regent also. The union of the three Scandinavian kingdoms was thus accomplished. It was still but a personal union. It was, however, a first step towards political and institutional union. But in the way of a successful realization of such a consolidation stood, at that juncture, too many difficulties. The political civilization of the three states was still upon far too low a stage for any such form of union, and the Swedish rebellion of 1520 against the union-king, Christian II., resulted in the withdrawal of Sweden from any connection with the other two states and in the elevation of the house of Vasa to the separate throne (1523). The resistance of Norway to the Danish dynasty was not so successful. It was, on the contrary, a complete fail-

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ure; although here far more than in Sweden had the king made use of his powers to the advantage of his Danish favorites, both in the constitution of the *personnel* of his official system and in the bestowal of the fiefs of the crown in Norwegian domain. The rebellion of the Norwegian nationals, under the leadership of Archbishop Olaf Ingebriktson, continued from 1532 to 1537, and at its unsuccessful termination the king, Christian III., declared that Norway had forfeited its political autonomy altogether by the rebellion, and should thenceforth be governed as a province of the Danish kingdom.

The revolution of the Danish political system in 1660, in which the state passed from the feudal onward to the absolute form, made no difference with Norway. It continued to be simply a royal province under the rule of the Danish king. The Norwegians sank into complete political lethargy. Not even did the ideas of the French Revolution awaken their old love of liberty. First in 1807, when England, feeling her commercial interests earnestly threatened by the agreements reached between the Emperor Napoleon and the Czar Alexander in the treaty of Tilsit, fell upon Napoleon's Scandinavian ally Denmark, capturing her entire fleet and destroying her intercourse with Norway, were the Norwegians excited to the idea of becoming a free state again.

During the seven years following Tilsit, Norway was left to shift for itself. Its commerce destroyed, its finances in confusion, and every import cut off, it suffered those bitter experiences which lead to independence. The issue was precipitated by the attitude of Russia to Sweden in 1812. Napoleon and Alexander had broken friendship over the interpretation of the provisions of the Tilsit agreement relating to Napoleon's "continental system," and Alexander was busy constructing the great alliance against him which was destined to prove his destruction. The czar desired to win Sweden for the coalition, and agreed with the Swedish king that the reward for his aid should be Norway. Under this inducement the king joined his forces to those of the allies; and after the overthrow of Napoleon at Leipsic, October 19, 1813, the Swedish troops,

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supported by detachments of the allied army, moved into Denmark and forced the Danish king, Frederic VI., to the treaty of Kiel (January 14, 1814), surrendering Norway to Sweden. But after seven years of independent existence the Norwegians were not inclined to permit themselves to be disposed of by agreements without their own consent. They took the ground that the Danish king might *surrender* the Norwegian crown, but that he had no right to *transfer* it — that it was a trust confided to him by the Norwegian people, and that when he gave it up, it returned to the source from which it had proceeded. Acting upon this view, the Danish governor in Norway, Christian Frederic — who, after the interruption of intercourse between Denmark and Norway in 1807, had, in understanding with the Norwegian leaders, continued to administer the Norwegian government, nominally as the agent of the Danish king, but really as the representative of the Norwegians — called a national convention of the Norwegian people to meet at Eidsvold for the purpose of considering the affairs of Norway. This convention declared Norway a free and sovereign state, formed a constitution, and elected Prince Christian king (May 17, 1814). Thereupon the Swedish crown prince, Bernadotte, marched into Norway at the head of the Swedish army, and overthrew the newly elected king of Norway by force of arms. Christian pledged himself in the treaty of Moss, August 14, 1814, to call the Norwegian national assembly (*Storthing*) together and lay his crown in its hands. It met, accepted the abdication of King Christian, declared the sovereignty to have returned to the people whom it represented, and then agreed to a modified form of the Eidsvold instrument, in the shape of a compact with the Swedish king, whom it then elected king of Norway (November 4, 1814). Therewith the modern union of Norway with Sweden was consummated.

I. *The Constitution of November*, 1814.

Since this agreement is the basis of the subsequent political history of Norway, and since its interpretation was the issue

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in the recent constitutional crisis, it will be necessary to a further comprehension of our story that we outline its main features.

1. *The general character of the constitution.* — It is not simply an instrument of government, ordained and established by the national convention (*Storthing*) of the Norwegian people, but it is a compact between the Storthing and the king. This is distinctly declared in the concluding words of the constitution. Freely translated, the section reads as follows:

> That the organic law of the Norwegian kingdom, as it is written word for word in the foregoing instrument, has been negotiated and concluded between our most gracious Lord and King Charles XIII. and the extraordinary Storthing of the Norwegian kingdom, through us his commissioners duly empowered by him thereto, we attest by our signatures and seals.

Then follow the signatures and seals of the agents of the king.

This is a most capital point; for, if such be the character of the constitution (as it certainly is), and if no method of amendment be provided in the instrument itself, then no change of the organic law can be made except by the agreement of the king and Storthing to the same. Neither king nor Storthing can change the constitution without the consent of the other. In other words, the king has an absolute veto upon all constitutional changes. Searching now the constitution to discover if any other manner than this is prescribed therein for making such changes, we find in article 112 the following directions:

> Should experience demonstrate that any part of the constitution ought to be changed, the proposition therefor must be laid before the regular Storthing and published. The regular Storthing next succeeding shall decide if the change shall be made. But the proposed change must not conflict with the fundamental principles of the constitution. It may only introduce modifications in single details, which do not in any manner change the spirit of the constitution. A two-thirds majority of the Storthing shall be necessary in the voting of any such modifications.

This is the only clause in the constitution which makes any reference to the process of amendment or constitutional change,

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and it is somewhat ambiguous, for it does not state by whom the proposed modifications shall be initiated. A simple bill or project of law may be initiated either by the king, through a minister, or by a member of the more numerous branch of a regular Storthing, *i.e.*, by a member of the *Odelsthing*. We are not informed, however, in any part of the constitution if the method shall extend to such propositions as have a constitutional modification in view. From the standpoint of the historical genesis of the constitution we would not, I think, conclude that this was intended. This compact was dictated to the Norwegian people at the point of the bayonet. They were greatly relieved that the Swedish king, sustained by Russia, did not go further and reduce Norway to the position of a province of the Swedish crown. They thought, at the moment, that this constitution was a most decided gain for them, and they were not at all so much concerned about changing it *themselves* in the future, as preventing the *king* from doing so. From an historical standpoint, therefore, it seems to me entirely manifest that it was expected that constitutional modifications of details should proceed only upon royal initiation. Be that, however, as it may, one thing is certain — that any change affecting the spirit or the fundamental principles of the constitution could only be effected by the agreement of the two powers or parties to the original compact, *viz.*, king and Storthing.

2. *The form and character of the government created by the constitution.* — Article 1 of the constitution declares Norway to be a free, autonomic, indivisible, and independent state, united with Sweden under one and the same king. That is, the union with Sweden is simply a personal union. The two states have a common executive, but his rights, powers, and prerogatives in the one have no validity in the other, nor are the political institutions of the two states in any manner consolidated. Articles 3, 49, and 86 confer the executive power upon the king, the legislative power upon the Storthing, and the judicial power upon the courts. Articles 4 to 48, inclusive, construct the executive department and define its rights, powers, and prerogatives. Their essential provisions are as follows :

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The king is the head of the executive department, but may appoint for the immediate administration of the Norwegian government a viceroy or a governor. The crown prince alone can be viceroy, but any one may be appointed governor, Norwegian or Swede. The king appoints also the members of his council, composed of a minister of state and seven other members, from among Norwegian citizens over thirty years of age, and distributes the executive business between them as he may see fit. Upon extraordinary occasions, the king, or in his absence the viceroy or the governor, may call other Norwegian citizens to sit in the council, but they must not be at the same time members of the Storthing. The king is bound by the constitution to reside for a part of each year in Norway unless necessarily prevented. The viceroy must reside generally in Norway, and can be absent only three months of the year. Of course the governor must reside in Norway. When absent, the king may confer the internal administration of the kingdom, in the cases which he shall himself prescribe, upon the viceroy or the governor, with at least five members of the council; and these shall then administer the government in accordance with the constitution and the royal instructions, and make report to the king of their acts. When the king is present in Norway, the functions of the viceroy or governor are suspended, and in case there be a governor he, then and for such time, takes the place of first minister of state. When the king is in Sweden, the Norwegian minister of state and two members of the council must sojourn with him. They have the same duties and the same responsibility as the government in Norway, and the king can decide questions pertaining to the government of Norway only in their presence. The person of the king is sacred, and he is irresponsible. The responsibility rests upon the council. He must, however, give his oath in the presence of the Storthing at the beginning of his reign to govern the kingdom of Norway in accordance with its constitution and laws. Of course his viceroy or governor is responsible only to him. Under their administration as well as his, the responsibility to the Storthing rests solely upon the council. A simple majority of the council forms a quorum for business, and a simple majority of a present quorum is sufficient to pass a resolution. In case of a tie, the viceroy or governor shall decide, or in their absence the oldest member may cast the deciding vote in addition to his own vote as counselor. All the business transacted in the council must be entered upon a journal; and each counselor is bound to express freely his own opinion, to which the king must give ear, but the king is not bound by the advice of his council. And if any member of the council thinks that the king's resolution is in conflict with the constitution or laws of the kingdom, or injurious to its interests, it is his duty to protest against the same and have his protest

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entered upon the journal. If he does not do so, he must be regarded as in agreement with the king and is responsible to the Storthing for the king's act. The Norwegian minister of state and the two counselors who follow the king's person have consultative voice in the Swedish council, when questions are under consideration in the latter pertaining to both kingdoms; and, as to such questions, the opinion of the council in Norway must be obtained unless the affair demands such haste in its determination as to preclude the possibility of such delay. Finally, the crown descends according to the Salic law, *i.e.*, to the first-born of the male line; and in case of extinction of the line, the Swedish Diet and the Storthing, in agreement, elect the successor or the new dynasty.

The powers recognized to the king by the constitution are, first, that of appointing all officials. Before making appointments, however, the monarch must take the opinion of his Norwegian council, and he cannot appoint a prince of the blood to any office, except the crown prince, who may be made viceroy. Secondly, the king has the power of dismissing the governor, minister of state, and members of the council; secretaries of the ministers; ambassadors and consuls; high magistrates; chiefs, civil and military; commanders of fortifications and commanders of cruisers, — likewise after hearing the opinion of the council upon the subject. The dismissed officer, however, receives two-thirds of his salary until the next meeting of the Storthing, which body then decides the question of pension. Other officers may be dismissed only by a judicial decision. Thirdly, the king appoints and dismisses at pleasure the members of his court. Fourthly, the king may confer orders of merit for distinguished services, but the order creates no exemption from any duty to the state, nor any claim to any office, and no inheritable privilege can be conferred. Fifthly, the king is commander-in-chief of the army and navy. He cannot, however, increase or diminish the strength of either without the consent of the Storthing. He cannot place them in the service of a foreign power, nor can he bring the military of a foreign power into the kingdom without the consent of the Storthing, except auxiliaries to repel a hostile attack. In time of peace he can hold only Norwegian troops in Norway and at such time no Norwegian soldiery can be stationed in Sweden; but he may have a Norwegian body-guard and Norwegian volunteers in Sweden, and for purposes of drill may call the nearest troops in either kingdom into the other, for not more than a period of six weeks in any year and to the number of not more than 3,000 men. He cannot use the Norwegian forces in offensive war without the consent of the Storthing, nor ever lead the *Landraern*, or troops not belonging to the line, out of Norway. He cannot man the war marine of either kingdom with subjects of the other, except they be volunteers, and he must

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station the Norwegian war marine in Norwegian ports. Sixthly, the king collects the taxes levied by the Storthing, and administers the property of the state in accordance with the laws of the Storthing and for the public welfare. The Norwegian treasury must, however, remain in Norway, and its funds can be employed only for Norway. Seventhly, the king may make and abolish ordinances concerning commerce, customs, and the police, but such ordinances must not violate the constitution or the laws, and they are only provisory to the next meeting of the Storthing. Eighthly, the king regulates all public worship, all religious assemblies and meetings, and sees to it that the public teachers of religion follow the prescribed norms. Ninthly, the king has the power of pardon, exercised in the council and upon hearing the opinion of the highest court. And finally, as sole international agent, the king declares war, makes peace, enters into and withdraws from alliances and treaties, and sends and receives ambassadors. For a declaration of war, however, the advice of the ministers must first be taken, and for this advice they are responsible to the Storthing.

Such in outline was the scope of the prerogative established by the constitution. I shall not, at this point, undertake to analyze or expound any of its elements. That will be best done in connection with the history of the actual working of the system.

3. *The constitution and powers of the legislature.* — Articles 49 to 85 inclusive provide, in substance, as follows:

The people shall exercise the legislative power through the Storthing, which shall be separated into two bodies, the *Lagthing* and the *Odelsthing*. The members of the Storthing are chosen by the suffrage of those Norwegian male citizens, in full possession of their civil rights, twenty-five years of age, who have been resident in Norway for five years previous to the election, and who are or have been officials, or own land or have worked the same land as tenants longer than five years, or are burghers of a commercial city, or who own land to the value of 300 *daler*[1] in other than commercial cities. The election is indirect. The term is for three years, and the country must have a two-thirds representation in the body over against a one-third representation of the cities. The member must be not less than thirty years of age and must have been for ten years a resident of the kingdom. Disqualified are the members of the council of state and the officials in the several departments and servants and pensioners of the court. The body has the

[1] *Specie daler*, about 4*s.* 6*d.*

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power of self-assembly on the first working-day of the month of February of every third year; the king having the power to call only an extraordinary session. When assembled, the body verifies the election of its members, has control of its discipline and procedure, and its members are privileged from arrest in going to, returning from, and while present at, the session, unless taken in a criminal act; and they enjoy perfect freedom of speech and debate in the assembly. The king opens the session of the Storthing in person or by representative, and makes report of the condition of the kingdom, and calls attention to matters demanding legislative action, but no deliberations can take place in his presence. Once assembled and its session opened, the Storthing separates itself into two bodies by choosing one-fourth of its members to form the Lagthing, the remaining three-fourths composing the Odelsthing. The two houses then separate and each elects its own presiding officer and bureau of officials, and thenceforth they act generally as independent bodies. Bills or projects of law are initiated in the Odelsthing, either by the motion of a member or of a minister of the crown. A bill passed by the Odelsthing is then sent to the Lagthing, which body can only accept or reject, but not modify. If it rejects, it must return the bill to the Odelsthing with the reasons for its dissent. If, after considering these reasons, the Odelsthing returns the bill unchanged and the Lagthing again rejects it, then the two houses must meet in Storthing, and this body decides the question by a two-thirds vote. After passing the Odelsthing and Lagthing, or the Storthing, as above described, the bill must then be presented to the king, or, in his absence, to the viceroy or the Norwegian ministry, by a deputation consisting of members from both divisions of the Storthing, for approval. If the royal sanction be accorded, the project then becomes law. It may, however, be refused; in which case the existing Storthing cannot send the same project again to the executive for ratification, but the next succeeding Storthing may. The executive may again veto it; but if the third succeeding Storthing passes the same project, unchanged, in both houses or in united assembly, it then becomes law without the approval of the crown, should that be still refused. The sanction of the crown is not necessary to the declaration of the Storthing that it is assembled in accordance with the constitution, nor to the fixing of the rules of discipline in the body, nor to the proving of the election or credentials of its members, nor to the naturalization of foreigners, nor to a resolution of the Odelsthing placing the council of state (or any person) on trial. The Storthing may not remain in session longer than three months without the king's consent. Up to that period it has the exclusive right of self-adjournment, prorogation, and dissolution. After that, the king may adjourn or prorogue, but not dissolve it. The proceedings are public, and

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the journal must be published, except the contrary be voted by a majority of the members. Any one who obeys any command, the purpose of which is to disturb the freedom and security of the Storthing, is to be regarded as guilty of treason against the state. Upon the Storthing, as thus constituted and thus acting, the constitution then confers the powers: (1) of legislation and taxation; (2) of borrowing money; (3) of supervising the finances; (4) of making all appropriations; (5) of fixing the civil list of the king and viceroy, and the apanages of the royal family; (6) of ordering the production of all state papers except military commands; (7) of requiring from the crown information in regard to treaties and conventions made with foreign powers, except as to the secret articles; (8) of requiring any person, except the king and the members of the royal family, to appear before its bar; (9) of revising the pension lists and making such changes therein as it may deem necessary; (10) of appointing revisors of the accounts of the state; and (11) of naturalizing foreigners.

4. *The judicial department.* — It will not be at all necessary to the purpose of this paper to give an exhaustive description of this department. It need be considered only in so far as it is vested with political or semi-political functions. According to article 86 of the constitution:

> There shall be constituted a court, consisting of the members of the Lagthing and the judges of the supreme court of the kingdom. [The latter are, as we have seen, appointed by the king.] This organization is called the *Rigsret*, is presided over by the president of the Lagthing, and has jurisdiction over the members of the council of state and the judges of the supreme court for malfeasance in office, and over the members of the Storthing for any crime which they as such may commit. Prosecution in this court may be undertaken by the Odelsthing, and the accused may object to two-thirds of the members of the court without giving any reason therefor, and have trial before the other third only.

Finally, the constitution contains the usual guarantees of the constitutional state in reference to the private rights of the individual; *viz.*, freedom and security of person and property, and free expression of opinion. On the other hand, the state has an established religion — the Lutheran — and is very intolerant.

A brief survey of these provisions will manifest clearly that

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we have here the form of constitutionalism which, in distinction from the *cabinet* (or *parliamentary*) system, may be termed *presidential* — the form in which the executive power is independent of the legislature in its tenure, and is not necessarily in political agreement with it; while, on the other hand, the legislature is independent of the executive, and not subject to dissolution by executive act. At least, this would appear, from the abstract study of its provisions, to be the theory of the constitution. How these powers have adjusted themselves historically is, however, a question of more importance. In fact, it is the real question with which we are dealing in this essay.

II. *Historical Adjustment of the Constitutional Powers.*

The first real struggle between the legislature and the executive was upon the issue of the abolition of the privileges of the nobility. The liberal law of suffrage had produced, at the very first election, an anti-feudal majority in the Storthing; and, in the session of 1816, it laid its hand at once upon the mediæval immunities and franchises of the nobles, abolishing them all with a single sweep. The king, Charles XIII., hardly knew whether to regard this act as an attempt to change the constitution or as a simple project of law. It certainly was questionable. It is true that these immunities and privileges were not secured to the nobles in the constitution, but they furnished a most substantial and important element in the conditions and relations of the society upon which the constitution was founded. This project sought, therefore, to change the social basis of the constitution, if not the constitution itself. The view prevailed, however, both in the Storthing and the ministry, that the measure was not to be regarded as a proposed amendment to the constitution, and that it was subject, therefore, only to the suspensive veto of the crown. This the king interposed. In the session of 1819, the Storthing re-enacted the project, and the new king, Charles XIV. John (Bernadotte), vetoed it again. In the session of 1821, the Storthing manifested its determination to pass the measure for the third time. The king,

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who was not at all so devoted to the interests of the nobles as his predecessor had been, because, among other things, of the plots which they had formed against his succession in 1817, cared far less about the content of the bill than the threatened manner of its enactment. His chief thought was, how to save himself from the chagrin of an overridden veto. He therefore proposed a compromise to the Storthing, offering to agree to a curtailment of the immunities and privileges of the noble class, with indemnification for the loss. The Storthing yielded, however, only so far as to give promise of indemnification. The king chose to sign the bill in this form rather than suffer his authority to be successfully defied. The principle for which this case serves as the original precedent is, therefore, that a measure which does not propose to change directly the constitution itself, either in spirit or letter, but which only affects it remotely by creating new social conditions which may subsequently work constitutional transformations, is to be regarded only as a simple project of law, and therefore as subject only to the suspensive veto of the crown.

The king was evidently much disturbed at the result, for he immediately proposed to the Storthing a bill which should authorize him to create a knighthood, and a constitutional amendment which should change his suspensive veto upon projects of law into an absolute veto. In spite of his popularity among the masses, both of these propositions were rejected by the Storthing in the session of 1824.

On the other hand, the Storthing was not so successful in its struggle with the crown concerning the abolition of the governor-general's office. The Storthing took offence at that clause in the constitution which permits this office to be filled by a Swede as well as a Norwegian. Between 1824 and 1833 the Storthing made several attempts to destroy the office; but it was created by the constitution, and its abolition could take place only by way of constitutional amendment. The king claimed and held the ground that against all changes of the constitution he had an absolute veto. The Storthing was not disposed to admit this view, and the dispute seemed on the point of

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becoming a question of power rather than one of constitutional law, when the king put an end to the controversy by withdrawing the unpopular governor and not appointing another. If this case can be taken as a precedent for anything, it must be for the principle that against any direct change of a constitutional provision the crown has an absolute veto. That in this case, again, the king was not entirely satisfied with the result attained was manifested by the fact that in 1836 he again proposed to the Storthing the change of his suspensive veto upon all legislation into an absolute veto. The action of the Storthing upon the proposition manifested in return very clearly its view of the whole subject of the veto power; it laid the royal project upon the table without further consideration.

The third struggle for the adjustment of the constitutional powers was upon the issue of the relation of Norway to Sweden in international affairs. The theory of the Norwegian constitution was, as we have seen, that Norway was related to Sweden only through the person of a common executive. This independent relation could be substantially maintained in internal affairs, since the independent legislatures could prevent any institutional consolidation; but in external affairs, which were to a much higher degree subject to royal management and discretion, it was manifestly different. Before 1836, a common war and peace status, a common diplomacy, a common consular system, and common treaty obligations had become fixed facts in the governmental practice. It was in this year that the Norwegian Storthing called attention to these conditions, and raised complaint that the consuls caused Norwegian vessels to hoist Swedish ensigns in the foreign ports and entered Norwegian vessels as Swedish in the foreign shipping lists. The constitutional committee of the Storthing immediately recommended the adoption of a resolution praying the king to secure to Norway an independent mercantile ensign, and to take care that the independence of Norway be better expressed in the insignia of the union flag and upon the coinage and public seals. The time for prorogation arrived before the resolution came to discussion. In the session of 1837, however, it was

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taken up, and an address was sent to the king upon these points. The reply of the monarch was, that what was prayed for was already duly accorded. He finally, however, conceded to the Storthing that the Norwegian vessels should carry their ancient flag instead of the union colors when beyond Cape Finisterre and in other remote parts of the sea. This contest accordingly did not result in the disruption of the common international institutions of the two kingdoms which, between 1814 and 1836, the crown had been gradually establishing. The reasons for their existence were too cogent and natural to permit their being set aside. A substantial advance in the consolidation of the union had thus been made — an advance most necessary to the existence of this complex state.

With this triumph ended the life of Bernadotte, the citizen-king. He died in 1844, and his son Oscar I. succeeded to the throne. The new king had been, while prince, viceroy of Norway, and was much beloved by the Norwegians. With his accession, the struggle between the crown and the Storthing over the interpretation of the constitution ceased. He made no propositions for a change of the organic law, and they were more generous towards him in all their legislative acts. He seemed to have a truly statesmanlike conception of the international relations and the international calling of his state. He recognized in Russia his most dangerous enemy, and in Germany and England his most sincere friends. He regarded the union of the entire Teutonic north in one state body as the great object to be aimed at in both internal and external politics. Under him the Scandinavian party took its rise, with its plan for the union of Sweden, Norway, and Denmark into one national state, which should give to Scandinavia its natural ethnical limits, and secure to it its proper influence and dignity in the concert of nations. In 1855, the king went so far in his anti-Russian policy as to enter into an alliance with England and France, in which he pledged himself to these powers not to cede any territory to Russia, nor to exchange any with her, nor to permit her to occupy any, nor to grant to her any right of pasturage or of fishing, or any privilege of any other nature, and to resist any

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pretensions of Russia in regard to the same; and in case Russia should make any demands or proposals in reference to any of these things, to communicate the same at once to England and France. On their part, these states pledged themselves to send to the aid of King Oscar such military and naval forces as, together with those of Sweden and Norway, might be sufficient to resist successfully the pretensions and aggressions of Russia. This was, in the main, a sound piece of foreign policy. The only weak spot in the arrangement was that France, instead of Germany, was a party; and this was a most serious defect. The policy of France towards Russia is, has been, and must be, a vacillating one. Her interests lie sometimes opposed to those of Russia, but sometimes in a line with them. It is England and Germany who are naturally Russia's constant and eternal foes; and it is only in alliance with these that the Teutonic north is safe from Russian encroachments. At the moment, however, the relation of Germany to Denmark, in the Schleswig-Holstein question, made any true solution of its relations to Sweden-Norway impossible.

In the midst of his successful labors for the welfare of the two kingdoms, the good King Oscar was overtaken by death (July 8, 1859), and the crown descended to his eldest son, Charles XV. The Storthing immediately raised the constitutional question again by passing an act intended to abolish that provision of the constitution which empowers the king to appoint a Swede to the office of governor-general in Norway. This time the Swedish Diet took up the subject and passed resolutions declaring the act of the Storthing to be a violation of the constitution, and demanding a revision of the relations between Norway and Sweden — which demand the Storthing repelled. It is certainly difficult to see that the Swedish Diet had any legal right to make such a demand. As we have seen, the union of the two kingdoms was expressed only through the common executive; the respective legislatures were totally foreign bodies to each other. It was therefore a revolutionary demand, and contemplated the establishment of a new relation between the two states. It may have been justifiable upon

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grounds of natural reason, but was not warranted by positive law. The king, who inherited with the crown of his father both the good sense and the mild disposition of the latter, felt compelled to interpose his good offices between the angry legislatures. He gave the Norwegians to understand that he did not intend to appoint any governor-general over them, and they let the project for the abolition of the power to appoint a Swede drop. Under the pacifying influence of the monarch, the standing committee of the Storthing for the revision of the constitution even voted to entertain the subject of constitutional reform. The principal proposition made to them was the establishment of a union parliament for Norway and Sweden. The committee was, however, unwilling to agree to this, except upon condition that Denmark could be brought into the union. The fear was, of course, that the larger, more powerful and populous Sweden might use the proposed institution as a means to bring Norway under a greater subjection to itself. Hence the condition insisted upon by the Norwegians, who felt that by Danish assistance Swedish encroachments might be prevented. This was in the session of 1867. The plan for the revision dragged along until 1871, when the Storthing rejected it altogether. The king had in the meantime attempted to conciliate the Norwegians by signing the bill for the annual assembly of the Storthing (1869); but the effect of the royal concession was rather to heighten the spirit of aggression; for the Storthing immediately voted again to abolish the office of governor-general in Norway. The king again interposed his veto and held his ground. It was thus, at last, with a spirit of resentment that the plan for a revision of the constitution in the direction of a closer union with Sweden was rejected — a spirit which would not be satisfied with this mere negative act, but would seek to go farther and revenge itself upon the monarch for his veto in some positive way. It was not strange that the way chosen was calculated at once to satisfy this spirit, and to avoid, in the future, the effect of the royal prerogative. And this leads us to the fifth and most recent struggle over the interpretation of the constitution — a struggle in which the

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long antagonism between the king and the Norwegian parliament reached its culmination.

The first move of the Storthing was to require the presence of the king's council of ministers in the legislature. The first question in regard to the proposition was, of course, whether it was a mere project of law or an amendment to the constitution. It is true that there was no express clause in the constitution protecting the ministers against this demand, but any one possessing but slight juristic forecast could see that to compel the presence of the king's ministers in the legislature was a first step towards bringing them under the control of the legislature, and that a ministry controlled by the legislature would be the king's ministry only in name. But the Norwegian constitution clearly intended that the king's ministers should be such in fact. The Norwegian constitution, as we have seen, created a *presidential* monarchy, *i.e.*, a monarchy in which the executive power is vested in the king, and exercised by persons selected *by him*. The measure proposed in the Storthing was intended to transform the Norwegian system into the *cabinet* or *parliamentary* monarchy, in which the executive power is vested in a committee of the legislature. There is no doubt at all in my mind, that what was here projected was a constitutional change of the gravest nature. The Storthing first passed this measure March 4, 1872, and sent it to the king for his signature. The king and his counselors saw at once the real import of the project, and the monarch would not approve it. But before he returned it vetoed, the Storthing addressed him a petition praying him to consider it more fully, and expressing mistrust of his advisers. In his speech closing the session of the Storthing, May 18, the monarch declared that he had reserved the subject for further reflection. Before the opening of the following session, however, King Charles came to his end; and the crown passed to his brother, Oscar II., a man possessing both the virtues and the disposition of his two immediate predecessors. In his speech opening the Storthing of 1873, the new monarch referred to the subject, and promised to give the question his earnest consideration. During the course of the

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session, however, he gave no indication of a favorable disposition toward the project. The Storthing seemed irritated by his silence, for it resolved again the abolition of the governor-general's office; and this time the conciliatory monarch signed the bill. If, however, he imagined by this mildness to appease the doughty Storthing, he certainly misconceived the character of the Norwegians. At last, in his speech opening the session of 1874, the king said that after due consideration he had concluded that he could not sanction the project for bringing the members of his council into the Storthing except in connection with other changes in the constitution, the principal one of which should be the recognition to the executive of the power of dissolving the Storthing; that is, the king was not willing to have that part of the cabinet system favorable to the legislature introduced without that part which is favorable to the executive. This was certainly fair and just; but the Storthing rejected at once the royal plan, and passed for the second time, April 8, 1874, the original resolution. The king again refused his sanction, except upon the conditions expressed in his speech. Of course the question of questions now was, what would be the effect of a third passage of the bill by the Storthing. Three views of the constitution upon this subject were now advanced. (1) That of the king and the royalists, which was that in changes of the constitution the king had an absolute veto. (2) That of the moderate opposition, which was that changes in the constitution, like any other measures, were subject only to the suspensive veto of the crown. (3) That of the radical opposition, which was that in changes of the constitution the king had no veto at all.

The last two views rested upon the theory of popular sovereignty as the basis of the political system of Norway, and differed only in the method of its exercise: the one more deliberative and conservative; the other, immediate, speedy and radical. On the other hand, the first view rested upon the theory that the constitution was a compact between the king and the Norwegians. We know from the history of its formation that such was the fact. The king's view was therefore the

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only *legal* view. What the tendencies of the age might demand was another thing. Such demands, if not recognized by existing law, or not realized through existing legal methods, are revolutionary; and though revolution may be ethically just, it is never legally right. If it were, it would not be revolution, but simply due process of law.

The majority in the Storthing of 1874 held to the second view. In the next succeeding Storthing, that of 1877, the same view prevailed, and the legislature at once rejected the royal conditions and re-enacted the original draft. The king returned the project for the third time with the same conditions, and the next succeeding Storthing (that of 1880) rejected these modifications for the third and last time.

What now should the king do? Should he sanction the unconditioned project of the Storthing, and avoid thus the question of the prerogative by virtually surrendering the administration of the government to the Storthing? Or should he accept the issue upon the veto power, hold his ground, and, having under the constitution[1] the exclusive right to proclaim the law, refuse to promulgate the act of the Storthing as law? Or should he refuse to sanction the measure, but proclaim it as law without his sanction, recognizing thus the power of the Storthing to change the constitution in the same manner as it might make law?

It was evident at the moment that he had not quite formed his resolution as to the course which he should pursue; for he made a journey during the month of May, 1880, to Christiania to confer with the leaders of the Storthing upon the subject. He found them divided in their views, but the majority holding to the principle that a change in the constitution might be wrought by the vote of three successive Storthings, in spite of the king's veto. The council of ministers, on the other hand, excepting only the minister of the marine, held the view that in changes of the constitution the king has an absolute veto, and that this project was not simply a specific amendment, but a thorough-going change of the whole political system, and

[1] Article 81.

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advised the king to put his absolute veto upon it; and this advice he followed. What now could the Storthing do? Its president, John Sverdrup, the leader of the opposition, proposed that it should declare to the crown that its (the Storthing's) resolution was fundamental law in Norway. The Storthing voted in the affirmative, but the king answered that the act would not be proclaimed to the country as law. Nothing was now left to the Storthing except to impeach the ministers for the advice given by them to the crown upon the subject, or to resort to open revolution. The court of impeachment, the Rigsret, is composed, as we have seen, of the members of the Lagthing and the judges of the supreme court. A careful canvass of the opinions of these persons showed the opposition in the Storthing that no judgment against the ministers could be expected from that body until the membership of the Lagthing should be changed; and that could not be accomplished until the assembly of the new Storthing in 1883.

The relation between the crown and the Storthing became now so strained that the session was closed without the usual speech from the king, and the monarch felt compelled to leave troops in Christiania to protect the public peace. The president of the council, Stang, thought it prudent to resign, in view of the angry demonstrations of the opposition. The king came again to Christiania, accepted the resignation, and placed the more stout-hearted Selmer at the head of the ministry. In order to be sure of his position in the constitutional question, the king submitted the question of his veto power to the faculty of jurisprudence in the university at Christiania. The reply was almost unanimous, (only one member dissenting,) that against changes of the constitution the king has an absolute veto. If the king should hold his ground, the Storthing must succumb, or else strike out upon the uncertain pathway of revolution. At this juncture the radical Jaabäk imagined he had found the constitutional means for forcing the presence of the ministers in the Storthing. The eighth section of article 75 provides, as we have seen, that the Storthing shall have power to summon any one before its bar, excepting only the king and the members of the

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royal family. Both Sverdrup and Steen, the most prominent leaders of the opposition, fell in with this interpretation of Jaabäk. Of course no honest mind could find in this provision the power to make the ministers *take seats* in the Storthing. If it contained any such power, then it also conferred the right upon the Storthing to force *anybody*, except the king and the members of his family, to take a seat in the Storthing; which is absurd. The power was one of arraignment to answer charges and of summons to give extraordinary information, and not a power to subordinate the administration to the legislature. The plan was too absurd to meet with success.

The country began now to divide itself into parties upon the subject. In November, 1881, the greater land-owners met, at Lilleströmmen, and organized a royal party. The lawyers and the commercial class stood with them. The small land-owners and tenants, and the artisans and proletariat of the towns were divided between the radical opposition, following Steen and Sverdrup and the new republican party, led by the irascible poet-journalist-doctrinaire, Björnstjerne Björnson. The group described above (p. 277) as the moderate opposition was rapidly disappearing, some of its members going over to the royal party, but the greater number to the radical. In January of 1882, the Storthing was assembled in extraordinary session. It began its activity by demanding the dismissal of Selmer from the ministry as the preliminary condition to any negotiation with the king upon the subject of the royal veto; but the king could see no reason for this; regarded it as an attempt upon his prerogative; and would not comply. The Storthing then gave itself to all sorts of petty projects for revenge, such as voting to address the king only as "Majesty," and not as "most gracious Majesty," and to discontinue the salaries of the members of the council of state. In June, the monarch closed the session with much complaint against the attitude of the Storthing, and the radical majority in the body voted not to take the usual leave of the monarch. In this state of agitation and party hostility, the country approached the elections of the autumn for the new Storthing. In a great speech, at Lilleströmmen, Sverdrup

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announced the programme of the radical opposition to be: (1) maintenance of the resolution in reference to demanding the presence of the ministry in the Storthing; (2) extension of the suffrage to all independent men; (3) militia constitution for the army; (4) introduction of the trial by jury; and (5) such reform of the local administration as to accord greater local autonomy.

Björnson in his speech at Sticklestad declared the purpose of his party to be the overthrow of the kingship and the separation from Sweden.

The royal party not only sustained the principle of the veto as they understood it, but advocated closer union with Sweden under a common parliament.

The election gave the Radicals an increased majority — 80 to 34. In the preceding Storthing the numbers stood 72 to 42. The Lagthing could now be so constituted as to secure from it a Rigsret favorable to the impeachment of the ministers. On March 4, the committee of the Storthing vested with the power of initiating impeachment brought in the proposition to the Odelsthing to prosecute the ministers before the Rigsret for advising the king: (1) to refuse the publication of the Storthing's resolutions in reference to the presence of the ministers in that body; (2) to withhold his sanction from an appropriation made by the Storthing for the purpose of creating a military force under its control (rifle-clubs); and (3) to withhold his sanction from a resolution of the Storthing creating a central bureau for the administration of the railways. — The last-mentioned measure was one which the government had itself proposed, but to which the Storthing had added an amendment, providing that two members of the legislature should be members of the bureau. Under the advice of the ministry the king confirmed and published the original proposition, but vetoed and left unpublished the Storthing's amendment.

The prosecution was under the power conferred upon the Storthing in articles 5 and 30 of the constitution, according to which the ministers are made responsible for the king's acts, and it is made the duty of every member of the ministry to

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make protest against any resolution of the crown which violates the constitution or laws, or which is manifestly contrary to the interests of Norway, and have his protest entered in the journal; in default of which he shall be regarded as coinciding with the king and taking the responsibility for the royal act, and may be prosecuted therefor by the Odelsthing before the Rigsret.

The first difficulty which presented itself to the prosecution was the question as to whether the ministry should be arraigned as a body, or each member thereof separately. Since all were guilty of the same acts, it seemed more natural and logical that the former course should be pursued; but in that case, as each of the accused had the constitutional right to object to one-third of the members of the court, they might exhaust all the members of the Lagthing but six.[1] The court would then consist of six members of the Lagthing and nine regular judges, and it was the supposition that the judges would sustain the ministry. On the other hand, it might be said that if the ministry should be tried as one body, and each minister should exercise his right of objection separately, the court would be constituted for each more by the will of the others than by his own will. This consideration certainly favored the view that the constitution intended separate procedure in impeachment. The ministers themselves were not clear as to their right to be dealt with as a body, and undertook to forestall the question by agreeing each to object to the same members of the court. In June of 1883 they sent in their objection to 13 members of the Lagthing sitting in the court, leaving 16 members with the judges to constitute the court. The Lagthing at first made opposition to the exercise of this right at all by the ministers; but in this they overshot the mark. The popular feeling was violated by this manifest attempt to rob the ministers of their constitutional right. The turn in the tide of popular opinion brought matters, for the moment, to a standstill. After a week's deliberation, twelve[2] of the thirteen members of the

[1] Article 87 of the constitution.

[2] The Lagthing and the judges of the supreme court together numbered 38 members, and the Radicals claimed that 12, not 13, was the third of 38. Of course their arithmetic was adopted.

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Lagthing to whom objection had been made withdrew. The committee of prosecution then appointed August 7 for the assembly of the court, and summoned Selmer alone to appear for trial. This made manifest the fact that the prosecutors had resolved to proceed with each minister separately, notwithstanding the fact that they — the ministers — had all objected to the competence of the same members of the Lagthing. The accusers thus determined from the outset to give themselves the benefit of the doubt.

The displeasure of the king at these signs of revolutionary intent was expressed by the withholding of his usual address at the close of the session of the Storthing, June 24; and the temper of the Radicals was revealed in the unparliamentary act of their leader, Speaker Sverdrup, who himself made a speech after Selmer had closed the session, and then refused to hear a protest by the conservative Motzfeldt against his disregard of parliamentary law. The month and a half between this date and the day fixed for the beginning of the prosecution was a period of painful and ominous suspense. In the very middle of it, the old church at Eidsvold, in which the convention sat while framing the constitution, was struck by lightning and completely destroyed with all its historic contents. It hardly required a superstitious disposition to make the friends of law and order feel that this was portentous of the future.

On August 7 the members of the Rigsret assembled according to appointment and constituted the court, with the nine judges and the seventeen members of the Lagthing, for action. The legislative members, of course, were about all Radicals, owing to the fact that they had all been chosen by the radical majority in the Storthing; and since the rules of procedure were adopted by a simple majority, no difficulty was experienced in passing the formal resolution to try the ministers separately. The court felt compelled, however, to give Selmer's counsel time to prepare the defence, and fixed the hearing of his case for October 22. During this interim, the minister's chief adviser, Bergh, undertook to object to the presence of eleven of the seventeen Lagthing members in the

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Rigsret upon the ground that they had voted in the legislature for the vetoed projects which were now the basis of the prosecution. He claimed that they could not be impartial, and were therefore unfit to sit in judgment upon the case. The prosecuting attorney, Dahl, answered that in political trials judicial impartiality was not a necessary principle of public jurisprudence. The universal practice certainly sustained the latter view, and Bergh hurt his case by insisting upon the former. Of course he could effect nothing with both reason and prejudice against him. His antagonist, however, overshot the mark also, when he declared that the members of the Lagthing in the court would represent *the will of the people* in the case. The oath which each member of the court was, by the constitution, required to take pledged him to pronounce judgment according to the law of the land, and to have only God and justice before his eyes. The introduction of the will of the people as a determining factor, or even as an influencing element, into the decision would therefore be a piece of reckless revolutionary jugglery. The threat of the attorney manifested clearly the spirit of the party for which he was acting.

From October 23 to 29 the prosecution developed its case. The allegations and the arguments were briefly as follows. The king has no veto whatsoever upon constitutional changes, since there is no mention of it in the constitution itself. The king has no veto upon financial measures, since no mention is made thereof in the constitution itself; and the king has no power to separate the provisions of a bill sent to him from the Storthing, vetoing the one part and approving and executing the other, since the constitution makes no mention of such a power. The minister was charged with having advised the king to these acts violating the constitution, and with having made himself liable to prosecution by the Odelsthing before the Rigsret under the provisions of article 30 of the constitution. The prosecution concluded with the motion for condemnation.

The defence answered and argued that the Rigsret is not the authorized interpreter of the constitutionality of laws or executive acts, since the constitution has nowhere so declared it, and

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since in no political system of the civilized world is the interpretation of the constitution in political questions vested in a court; that the king has the power of absolute veto upon all measures for constitutional changes, since the constitution is a compact between the king and the Storthing, and can be altered in no point by either party except with consent of the other; that the king has the power of exercising a suspensive veto upon all appropriations of money, since the appropriations must be made by law, and he has such a veto upon all projects of law, and has exercised it in numerous instances against financial measures of every kind; and that the king may exercise the prerogative against any part of a project, not necessarily connected with the other parts, as a consequence of his authority to exercise it against the whole, especially if the part be, in his opinion, unconstitutional. The defence closed with the motion for the dismissal of the case, or the discharge of the accused. The reply and rejoinder brought out nothing new in the argument. They were only a tedious repetition of what had been said before.

It seems to me that the unbiased judicial mind would quickly decide, simply from a careful perusal of the constitution:

1. That the Rigsret *is* authorized to pass upon the constitutionality of the executive acts. Article 30 reads:

> The council of state shall keep a journal of its acts. Each member is bound to speak his opinion freely and independently, and the king must hear him, though he is not bound by his minister's advice. If, however, any member of the council finds that the king's resolution conflicts with the constitution or laws of the kingdom, or is manifestly contrary to the welfare of the state, then is it his bounden duty to make protest against the same, and have his protest entered upon the journal. Should he fail to do this, he will be regarded as having approved of the king's resolution, is responsible therefor, and may be brought before the Rigsret to account for his act or omission.

Without doubt, the power to determine whether the royal resolve, which has been advised or not disadvised by the minister, conflicts with the constitution or laws or welfare of the kingdom, is here vested in the body whose duty it is to

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hold the minister responsible therefor, unless the constitution expressly or impliedly denies the power to that body, or confers it upon some other body; and it does neither. In other words, the power to *interpret the constitution*, in so far as that may be necessary in order to discharge its duty of holding the ministers responsible, is here, by direct and absolutely unavoidable implication, vested in the Rigsret. This construction of the constitution is so clear and manifest and necessary, that Bergh hurt his case much by insisting upon the contrary view.

2. That the most fundamental principle of the Norwegian constitution is the fact, as we have seen, that it is a compact between the Storthing and the king; and that, therefore, although nothing is expressly declared in it concerning the method to be followed in amending or changing it, the necessary and unavoidable implication is that one party to the compact cannot modify it without the consent of the other. The unbiased mind must pronounce this to be constitutional law in Norway, and any departure from it revolution. It will not answer to say that the act advised or not disadvised by the minister may be in harmony with the *constitution* and yet contrary to the *welfare* of the kingdom, and the minister still liable to prosecution under this count, when the question at issue is a principle of the constitution itself. The minister swears to uphold the constitution as it is, and not as the Storthing or the Rigsret think the welfare of the kingdom demands it should be. If his act be in accord with the constitution upon such a point, then he has only discharged his sworn and bounden duty. Nor, again, will it do to say that the constitution requires the king to proclaim and execute the measures passed by three successive Storthings over his veto, and that the minister who does not advise this, or advises against it, is guilty of supporting the king in violating the constitution, when the measure contemplates and would effect a change in the constitution itself. It is as clear as the sun that the constitution does not vest any such power in the Storthing, and that the latter itself violates the constitution when it under-

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takes to assert the same, and that it begs the question entirely when it undertakes to found its prosecution upon the advice of the minister against the *proclamation* and *execution* of the measure instead of against the measure itself.

3. That appropriations of money are made in the Norwegian practice by law, and therefore that projects of this nature initiated by the Storthing are subject to the royal sanction in the same manner and with the same effect as projects for any other purpose, unless they be excepted by the constitution from the usual course of legislation; and they are not.

4, and lastly, that the division of a resolution of the Storthing by the king, vetoing it in part and approving it in part, is not authorized by any express provision of the constitution nor necessarily implied in any. Sound political science and the most modern constitutional law accord this power, under certain restrictions, to the executive, and would certainly approve of its exercise, should the legislature undertake by the tacking process to violate or impair his constitutional prerogatives, as was the case in this railroad bureau project. But be that as it may, the Norwegian constitution does not recognize any such principle, and it cannot be said to have been established by practice.

When, now, we re-examine these conclusions of our supposed unbiased observer, we are forced to the discovery that there is a conflict in the bosom of the constitution itself, since there is warrant in the constitution both for the position of the Storthing, that the Rigsret is the interpreter of the constitution in so far as that may be necessary to fix ministerial responsibility, and for the position of the crown, that no change in the constitution can be effected without the consent of the king. The Storthing may thus, if it will, through the Rigsret, class every project under the head of simple laws, or insist upon the interpretation that the king has no veto at all upon constitutional changes since the constitution does not expressly declare it; and the king, on his side, may answer that the Rigsret's power of interpreting the constitution is likewise only inferred from the constitution and not expressed in it. Evi-

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dently, if neither Storthing nor king would give way where both seemed to have equally the warrant of law, the question must soon become a question of power. The law was defective: there was a breach in the system which offered entry to the power strong enough to carry it. It was also manifest that, although the Storthing stood upon no better ground legally than the king, it was yet in more advantageous position to realize its claim, for it could impeach the king's ministers without let or hindrance, but the king could not dissolve it. He could only appoint new ministers, who would in turn be impeached if they did not secure the execution of the Storthing's resolutions. He could not even undertake to rule without a ministry, since this institution is established by the constitution itself. The political responsibility of the ministry will inevitably result in the subordination of the executive to the legislature so soon as the people really and persistently support the legislature in the conflict.

On the 27th of February, 1884, the Rigsret brought in its judgment. As was generally anticipated, it found Selmer guilty of the charges brought against him and condemned him to expulsion from office and to the payment of the costs of the prosecution. It was understood that the judicial members of the Rigsret voted for acquittal, but were overwhelmed by the Lagthing members, almost two to one.

The thirty-one conservative members of the Odelsthing immediately presented a declaration in that body, asserting that the prerogatives vested in the executive by the constitution could not be withdrawn from him by a judgment of the Rigsret. The radical majority took but little notice of this. The matter of importance to them now was the attitude which the king would assume toward the judgment. Would he obey it, see his minister expelled from office, command his successor to take seat in the Storthing, and sign the vetoed projects — or would he ignore the action of the Rigsret and continue the struggle with the Storthing? He first referred the question to the department of justice in his council, and early in March he issued his *Dictamen*. It ran as follows:

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What my predecessors declared in the years 1827 and 1845, I repeat here most distinctly, *viz.*, that no judgment of the Rigsret will be regarded as decisive in the settlement of constitutional questions nor, as precedent, binding upon me or my successors. I will not regard myself as limited by such judgment in the exercise of the powers vested in me by the constitution. In regard to the first point of the judgment (the presence of the ministers in the legislative chambers), I consider it of special and necessary importance to declare that the judgment of the Rigsret cannot abolish or modify the constitutional order, hitherto universally recognized, according to which no change in the constitution can be effected without the king's consent. At the time of my election to the throne, I swore my oath to uphold the constitution as interpreted by the practice of my predecessors, by the opinion of the men best acquainted with its history and its working, and by the existing declarations and resolutions of the Storthing itself; but I did not promise, and I am prevented by my oath from promising, to give my unconditional approval to every constitutional change which a majority of the Storthing may resolve. This would be nothing less than a renunciation of the prerogative and the position assigned to the king by the constitution, which the king is bound to uphold. The obligations which rest upon the union-king [of Sweden and Norway] require absolutely that I shall maintain the executive prerogative, which alone secures the union of the two kingdoms. I repell every separate attack upon the guaranties of the perpetuity of the union, one of the most important of which is the absolute veto of the crown upon proposed changes of the constitution of either kingdom. Should I sanction such a judgment as that pronounced against Minister Selmer, I should make myself and the Norwegian people participants in responsibility for its effects upon the kingdom and the union. It is well known that in the arrangement of the prosecution, and in the constitution of the court, the principles of an impartial trial were disregarded and violated. I consider, however, that, under the existing conditions, I shall best subserve the welfare of the country by permitting Minister Selmer to resign his office. He desires it himself, and I hereby accept his resignation, assuring him of my most sincere appreciation of his long and faithful service.

This is a very curious, not to say in some degree undignified, paper. It begins threatening, it proceeds scolding, and it ends sacrificing. It manifests the fact that the king did not know what to do. If he thought thereby either to frighten or to shame or to appease the Storthing, he was greatly mistaken. The committee of the Odelsthing for the consideration of con-

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stitutional questions, met the *Dictamen* with the declaration "that the rights and duties of the king of Norway are defined in the constitution of Norway, that his contemporaneous position as king of Sweden gives him no rights and imposes upon him no duties in Norway, that the act of Union provides entirely independent constitutions and governments for Norway and Sweden and only connects them in the person of a common executive, and that there is no mention made anywhere of the king's right of sanction in constitutional changes." The committee repelled with decision any interference of the union-king or the Swedish government in the affairs of Norway. On the other hand, the Swedish ministry undertook to sustain the king. In answer to the question proposed by him to it concerning the power of the union over the constitutional struggle in Norway, it asserted that the union presupposes and requires that changes in the constitution of Norway can no more be effected without the king's sanction than in that of Sweden, and that the military power of Norway as well as that of Sweden must stand under the exclusive command of the union-king.

The Rigsret continued to pronounce sentence upon the ministers one after another until the king was left without a council. While the process was going on, he placed Bachke temporarily at the head; and when the latter was condemned, he took Schweigaard, one of the three whose sentence did not extend to expulsion from office. It was said that the king's indignation was greatly aroused, and that but for the influence of the moderate Conservatives, he would have appointed a ministry *du combat* under the leadership of Stang.

The Storthing, however, was not satisfied with any halfway triumphs. It repelled the approach of the Conservatives for an understanding, and assumed an attitude of hostility to the new ministry. On the 24th of April the Odelsthing passed, for the third time, a bill modifying the tenure of the parish bailiffs so as to deprive the crown most largely of its influence in their appointment, and declared that it was now law without the king's approval. The king referred the subject to the supreme

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court, and received from it the opinion that the project would deprive him of a right guaranteed to him by the constitution, and could not therefore become law without his consent. With this the war over the veto power of the king in constitutional measures was renewed. The ministry soon saw how it would terminate, and asked to be released from further responsibility. The king was thus again, in less than three months, without a council. In his isolation, however, he was able to get a more correct view of the situation than when surrounded by his partisans. He saw the approaching revolution in Sweden and in Denmark. He felt that he could not rely upon either the Norwegian or Swedish army in a struggle between the crown and the legislature, and that therefore an attempt at *coup d'état* would be his own destruction. He understood, at last, that in a constitutional crisis existing legality is only a part of the question; that a nation can outgrow its written constitution, and will inevitably burst it through unless it expand with that growth; that history, existing needs, and the spirit of the age, as well as legality, are forces which must be recognized in every political calculation. It manifests the real greatness of King Oscar's mind that, from the steps of the throne, he could comprehend these things, and the real power of his will that he so promptly resolved to do them justice in his decision. He called to him Professor Broch and authorized him to come to an understanding with the Storthing. The compromise was quickly reached, for the king gave way upon almost every point. It contained the following provisions:

1. An amendment to the constitution, requiring the presence of the ministers in the sessions of the Storthing, and making ex-ministers, without regard to their places of residence, eligible to seats in the Storthing. On the other hand, the Storthing refrained from asserting a right to change the constitution without the royal sanction.

2. The approval by the king of the bill for aiding the rifle-clubs, under conditions of royal inspection and royal commandership-in-chief.

3. Approval by the king of the railroad bureau bill.

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4. Approval by the king of the parish bailiff bill.

It will thus be seen that the Storthing failed to make valid its claim upon but a single point, *viz.*, the right to change the constitution without the royal sanction, and from this it did not recede — it only maintained silence, and left the subject to the developments of the future.

The king expected that the Storthing would reward his magnanimity by accepting the ministry of Professor Broch, a liberal though moderate man. He was, however, quickly made to feel that he had not yet taken the full measure of the unyielding spirit of the Norsemen. They were determined upon securing unconditional surrender, and the king had gone too far to attempt another stand against them. They refused Broch, and the king at last called Sverdrup, and gave him power to form the ministry and conduct the administration.

With this the revolution was complete; and the principle was introduced into the Norwegian constitution that the ministers are not the servants of the king, but of the state, and must be in political accord with the majority in the Storthing. The political system of Norway was thus changed from the presidential monarchy to the cabinet monarchy, and to that species of the cabinet monarchy most favorable to the legislature, *viz.*, that in which the king has no power to dissolve the legislature. There exists now, therefore, no means in the constitution whereby the misinterpretation of the will of the people upon a particular measure by the legislature may be immediately corrected. One of the most invaluable parts of the cabinet system is therefore wanting, and the dangers of the *Convent* really threaten.

It would be difficult to divine the exact course which this revolution will take in the future; but the ultimate result, it seems to me, is more patent. It will be a great misfortune to Norway should the republican-disunion party gain the majority in the Storthing, and undertake the destruction of the kingship and the separation from Sweden. A territory of 122,000 square miles, a population of 2,000,000 souls, an army of 12,000

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men, a navy of 125 little vessels, and a revenue of 10,000,000 dollars cannot make an independent state; and a society, four-fifths of which are peasants and fishermen, is not prepared for republican institutions. Most especially is this true when that territory and population lie between territories not separated from it by barriers of impassable mountains or broad sea, inhabited by peoples of similar national genius and like ethnic traits, and at the same time exposed to attack from a colossal power whose lust for conquest is never satiated. This is the exact status and condition of Norway both as to means of power, geographic position, and ethnical relations. To my mind, the only independence which Norway can, in the nature of the case, claim and maintain is that of *local self-government;* such, for example, as appertains to a commonwealth in the American Union or the German Empire. If she continues to insist upon more, she will, most probably, lose all. Her politics threaten now to degenerate into demagogery, which generally results in the vulgar despotism of the "boss," and in subsequent reaction toward stronger monarchic power. Her most immediate danger, however, — the danger which menaces the whole Scandinavian North, — is her weakness and exposure to foreign attack. The great threat to security and independence throughout all middle and northern Europe is the unrest of Russia. This colossal power is held back from the open sea on the one side by Turkey, and on the other by Sweden, Norway, and Denmark. The really inland Black Sea and the half-yearly frozen Baltic are no sufficient outlets for such a power. It is not at all natural to suppose that Russia will not seize the moment of internal revolution in the Scandinavian states to fall upon them with her vast military power and reduce them to the condition of provinces in the great Empire, unless prevented by the intervention of foreign states. To the impartial, disinterested observer, there can be but one safe and real solution of the Scandinavian question, and that is the union of Sweden, Norway and Denmark under the kingship of the house of Bernadotte, with a union parliament containing a house of popular representatives, with local self-government in each of the parts, and with most friendly and

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intimate relations with England and Germany. There are many obstacles, of course, to the attainment of this result — many fears to be quieted, many heart-burnings to be soothed, many bitter memories to be buried away, and many jealousies to be overcome — but the truly disinterested friend of Teutonic civilization in the north must hope always for this outcome, which alone can make Scandinavia independent and powerful, and render her equal to the task of again contributing something to the political civilization of the world.

JOHN W. BURGESS.

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THE CONFLICT OF EAST AND WEST IN EGYPT.

I.

From Mehemet Ali to Ismail.

IT was not until the purchase of the Suez canal shares by Great Britain, in 1875, that the conflict to be described was waged with spirit. The influences and interests of the East and West, however, had clashed for many years. Long before the dawn of the nineteenth century the attention of England had been directed through Egypt to the far away Indian empire, that *El Dorado* that lured the British merchantmen to brave the storms of the southern seas. But the voyage 'round the Horn was a hazardous one and a long one; and the growth of commerce demanded that the Eastern empire should be made more accessible. England knew, and the world knew, that the direct route to India lay through the land of the ancient Pharaohs. England thought the way through Egypt should be overland; but France thought it should be by a canal that would one day connect the Mediterranean and the Red Seas.

France was interested in the valley of the Nile. She had put her foot there before England. The great Napoleon knew the value of Egypt. "By seizing and holding Egypt," he said, "I retain and command the destinies of the civilized world." And so, in 1798, he seized Egypt; but he did not hold it. The English, under Abercrombie, compelled the French to retire by the battle of Alexandria, in 1801. And now, for a short time, the influence of England was felt in Egypt. But it did not last long; for, after the accession of Mehemet Ali in 1805, Egypt was able to stand by herself. This event marks the starting-point from which it will be necessary to trace in brief the history and development of Egypt, in order to appreciate the government and condition of the country a decade ago, when England purchased the canal shares.

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When the firman of the Sublime Porte made Mehemet Ali the governor of Egypt, in 1805, the country was in a state of feudalism. The pasha appointed by the Porte had been only the nominal ruler, the real government of the country being in the hands of the petty lords, or beys, known as the *memlûks*. They had deference neither for pasha nor for sultan. It is true that a small tribute was promised the Porte every time a new pasha was appointed; but it was almost never paid. The governors had been many since the beginning of the century. "Indeed," says Mr. Patton, in his history of the Egyptian Revolution, "all the pashas that intervene between the French rule and that of Mehemet Ali are a will-o'-the-wisp to the historian. A pasha of some sort flies before the eyes, but when we attempt to grasp him he is gone. . . . Thus successively rose and fell Mehemet Khûsuf Pasha, Tahir Pasha, Ali Pasha Gezairli, and Khurshid Pasha. Mehemet Ali alone stands out the distinct historical figure in the foreground."[1]

The obscure Albanian owed his elevation to the pashalic to his success, while a Turkish commander, in quelling the dissensions among the memlûk beys. Once at the head of the government, he set to work in earnest to deprive them of their power, knowing full well that his position as the sultan's pasha would be at best both insignificant and insecure, so long as these feudal lords played fast and loose with the resources of the land. Until 1811, therefore, Mehemet Ali devoted himself to the suppression of the memlûks. Against this grasping for power England entered a feeble protest; not indeed because she sympathized with Egyptian feudalism, but because she happened, at that time, to fall out with the Porte, and desired, therefore, to help the sultan's enemies. She even sent troops to Egypt and took possession of Alexandria. But the occupation was brief; for Mehemet Ali descended from Upper Egypt, where he had been administering such correction to the memlûks as few absolute monarchs ever dared employ, and, proclaiming himself the champion of Islamism, he forced the infidels to

[1] A. A. Patton, F.R.G.S., A History of the Egyptian Revolution to the Death of Mehemet Ali, vol. ii., p. 14.

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retire to Sicily. It now remained for the vigorous pasha to perform the two acts that consolidated his power throughout the valley of the Nile: the first was the revolutionary transfer to his own possession of the landed property of the entire country, and the second was the total extinction of the memlûks by massacre in the citadel of Cairo. The period of destruction was succeeded by one of development. The absolute ruler introduced modern military tactics and established a naval arsenal in Alexandria; he built canals; he introduced the culture of cotton, a product that was destined one day to become the source of enormous revenues; he imported also indigo, forest trees, fruits, spices, *etc.*, for reproduction; he founded medical and educational institutions; he improved the police and rendered travel safe, so that now, for the first time, passengers and letters bound for India were conveyed with perfect safety through Egypt overland to Suez.

But Mehemet Ali was not content with these undertakings and improvements, important and difficult as they were; he longed for greater power. He made war against the Wahabees of Arabia and he conquered the peoples of the Sûdan. And all the time he chafed under his subjection to the Porte. Finally he sent his warlike son, Ibrahim, to pick a quarrel in Syria; and Ibrahim captured Acre and was soon fighting against the troops of his father's suzerain and carrying all before him. It seemed as if Mehemet Ali was about to become the sultan of Egypt and Syria.

This was in 1832, a time when England was keeping a very watchful and a very jealous eye on Russia, ready at any moment to claim a foothold in Turkey. England thought that Egypt, being *against* Turkey, must be *for* Russia. From self-interest England could not allow her "ancient ally" to remain between two such fires; this Syrian flame must be quenched. England hesitated, however, to act, and in 1833 the Porte recognized the feudal sovereignty of Mehemet Ali over Egypt, Crete, Syria, and Adana, exacting only a small tribute. The peace did not last long, and in 1839 the Turks were again fleeing before the victorious Ibrahim. It seemed as if Asia Minor and Constanti-

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nople must soon succumb to him. But now England intervened with an energy that was wanting in 1832. Her fleet joined those of Turkey and Austria off the coast of Syria, and confronted by British commanders on land and sea the troops of Ibrahim were forced to yield. The hopes of Mehemet Ali were blasted. His son had been overcome by England and he had been duped by France. Thiers promised an assistance that was never rendered.

The war at an end, the Powers endeavored to negotiate a treaty. After the usual diplomatic formalities and delays it was finally agreed that Mehemet Ali should evacuate Syria, Arabia, and Candia, and should receive the hereditary government of Egypt, acknowledging the sultan as his suzerain. The terms of this agreement were embodied in a firman issued by the Sublime Porte in 1841.

Mehemet Ali was now an old man, and during the remainder of his life the influences of his youth and early manhood, as is usually the case with those who have witnessed and participated in great governmental and social revolutions, predominated over the progressive spirit of his most vigorous and potent years. He became more of a despot than ever; and his severity had few of its former excuses. He did, however, permit an association of British merchants to organize a transportation service to India, through Egypt *via* Cairo and Suez, by means of which communication with India was made in weeks instead of months.[1]

In 1847 Mehemet Ali's intellect began to weaken, and within a year his dotage had so increased that his son Ibrahim was installed pasha of Egypt in his place. But Ibrahim's rule was cut short by death two months later, and in December of 1848 Abbas was invested with the pashalic. In the summer of 1849 Mehemet Ali died, spent in mind and body. A good idea of the character and work of this "Napoleon of Egypt," as he has so often been called, may be gathered from the following quotation from Mr. Patton's history:

[1] William Holt Yates, M.D., The Modern History and Condition of Egypt, from 1801 to 1846.

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There is much to be said in abatement of his merits. Although superior to a thirst for blood, from mere vengeance and resentment, and an easy pardoner of those who were no longer able to injure him, no compunction ever deterred him from removing the obstacles to his lawless ambition by fraud or force — most frequently by a compound of both. Nor was he able, with all his perseverance, to conquer his aboriginal want of education. Anxious to introduce European civilization into Egypt, he remained to the end of his life in utter ignorance of the economical principles upon which the prosperity of a state reposes. Greedy of the praise of Europeans, and, in the latter part of his career, anxious to count for something in the balance of military power, his allusions on this head showed to himself and to others the wide interval that separates the scientific organization of European military and political establishments from the Egyptian imitations which cost him efforts so lengthened and persevering. But although unable to resist the dictation of any European power, he was — within Egypt — all-potent in establishing an order that had never existed before, so as to afford those facilities that have proved so valuable to the Indian transit. He found Egypt in anarchy: and long before he had terminated his career the journey from the Mediterranean to Nubia was as secure as that from London to Liverpool. He learned to read, and attempted to write, after he had attained his fortieth year; and when we add that the practical result of his efforts was to leave his family in the hereditary government of Egypt, Mehemet Ali must be admitted to have been, without exception, the most remarkable character in the modern history of the Ottoman Empire.[1]

Abbas Pasha succeeded Mehemet Ali. He preceded his uncle Said; for, by the then existing law of succession, the reins of government fell to the "eldest male of the blood of Mehemet Ali." Abbas possessed neither the warlike impetuosity of his father Ibrahim, nor the ambition of his grandfather Mehemet Ali. He did not look beyond the bounds of Egypt for territory to acquire or for customs to imitate. It was enough for him that he was a good Mohammedan; that the wheat and millet fields throughout the valley of the Nile yielded their yearly increase; that the fellahîn prospered and paid their taxes without the application of kûrbash and bastinado, and that there was peace among the people who acknowledged him their master. Though he did not court the favor of foreigners, he allowed an

[1] Patton, vol. ii., pp. 17 and 19.

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English company to begin the construction of a railway from Alexandria to Cairo, which was to be continued across the desert to Suez. But he himself undertook no great works, built no new canals, and did not even carry out the schemes and plans of his predecessors. Abbas has been called a bigot and a miser. He certainly was neither liberal in mind nor lavish with money.[1] It is not surprising, therefore, that at his death he left a large sum of ready money in the Egyptian treasury. Perhaps this was known by those who are said to have strangled him. At all events, the money and the government passed to Said in 1854.

Said Pasha was a very different man from his nephew Abbas. Their tastes, their habits, their dispositions, their lives, and, consequently, their governments, were diametrically opposite. In fact Said was everything that his predecessor was not. Sociable, witty, extravagant, sensual, and fond of all the delights of life, he seemed rather the gay French courtier than the imperturbable Moslem ruler. He set up a court not unlike that of Louis XIV. He welcomed foreigners and entertained most lavishly. He forgot the sobriety enjoined by the Prophet, so that his dinners and his wines became famed for their richness and excellence. He accepted the suggestions of his foreign

[1] Abbas has had few defenders. Henry C. Kay, in *The Contemporary Review*, for March, 1883, says of him: "It is not my purpose to attempt the impossible task of justifying every act of his government. But, as a matter of justice and a fact of history, it ought to be stated that he was probably, though without the advantage of European education, the most able and the most efficient administrator the country has seen since the death of Mehemet Ali. He has met with the misfortune of having his reputation sacrificed for political reasons. French influence was supreme and practically unchallenged throughout the reign of Mehemet Ali. Abbas Pasha, on his accession, manifested a disposition to seek some measure of support from England. He added an Englishman to the French officials employed at his Foreign Office. He set about the construction, under the superintendence of English engineers, of a railway destined to connect Alexandria with Suez, an undertaking until then successfully opposed by France. He, moreover, placed his son under the care of an English tutor. The consequences may easily be understood. But the curious part of the matter is, that English writers, by constant repetition, one after the other, have done more to propagate erroneous views of Abbas Pasha's reign than those of any other nation, the French probably included. It is not my object to defend Abbas Pasha's private character, further than by adding that the generality of the stories told about him rest upon no better foundation than the merest gossip."

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parasites, and hastened to adopt this scheme or that scheme, according as the whim of the hour or the persuasive agreeableness of the schemer might move him.

Among the foreigners attracted to Egypt at the beginning of Said's reign, was a man of larger and nobler purpose than these grasping tricksters knew. Ferdinand de Lesseps had formed an early friendship with Said, while acting as diplomatic *attaché* in Egypt years before. At that time, also, he had conceived a plan destined to revolutionize the commerce of the world. It was not a new plan, however. The scheme of constructing a waterway between the Mediterranean and Red Seas, had been suggested to all the great rulers of Egypt, the Pharaohs, the Persian, Greek and Roman conquerors, and the Arab caliphs. Also, according to recent discoveries in the archives of Venice, it seems that the project of cutting the isthmus was considered by the mariners of the fifteenth century.[1] A canal between the two seas *via* the river Nile actually existed for an unknown period in the dynasties of the Pharaohs, and again for a period of more than four hundred years under the Romans, and lastly for a period of more than a century after the Arab conquest. But Mehemet Ali, though he had considered, had not favored the great canal scheme, and Ferdinand de Lesseps was obliged, therefore, to await a more opportune time for broaching his plan. He brooded over his idea of a waterway while England secured the construction of a railway.

With the accession, now, of his old friend Said, the cherished hopes of de Lesseps were kindled to expectation. Nor was he deceived in believing that the opportune time had arrived. He went at once to Egypt and laid his plan before the viceroy. It was accepted by him on the 15th of November, 1854, in these words: "I am convinced. I accept your plan. We will talk about the means of its execution during the rest of the journey. [They were taking a Nile trip together.] Consider the matter settled. You may rely on me."[2]

[1] Robert Routledge, Discoveries and Inventions of the Nineteenth Century, p. 163.

[2] Ferdinand de Lesseps, The Suez Canal, p. 13.

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The concession had no sooner been announced than English influence was brought to bear against the canal scheme. Mr. Bruce, the English consul in Egypt, told the viceroy that he was acting too hastily in the matter. At Constantinople Lord Stratford de Redcliffe threw obstacles in the way of the scheme, while in England the general attitude toward the canal was unfavorable, and even hostile. In January, 1855, the London *Times* declared against the proposed canal as an absolute impossibility. Lord Palmerston opposed the scheme from first to last. He held that the Porte must give its consent before the viceroy could allow the canal, forgetting that the English government had informed a former viceroy that he might construct a railway from Alexandria to Suez without the consent of his suzerain.

In February the sultan's council was on the point of granting the necessary permission, when Lord Stratford interposed his influence to produce delay. His lordship urged that the railway ought to be enough without any canal. He hinted to the Porte that a canal might so increase the importance of Egypt that the child would break with its parental authority. An influence also was brought to bear upon the viceroy, but probably not of so intense a kind as de Lesseps imagined; for he wrote at the time: "He [the viceroy] is even threatened with the displeasure of England, whose fleets might attack him when the business on the Black Sea is ended."

The whole matter had by this time assumed an international importance, with France at the head of the nations who favored the canal, and with England leading the opposition. Lord Clarendon, in communication with the French government, said that her majesty foresaw inconvenience in leaving the matter to be decided between the sultan and his viceroy. He submitted the following objections to the scheme: 1. The canal is physically impossible. 2. The project would require a long time for completion; it would therefore retard the projected railway and injure Indian interests. 3. Her majesty's ministers consider the scheme to be founded on an antagonistical policy on the

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part of France toward Egypt. The same objections and arguments were repeated by Lord Palmerston.[1]

All this time Said Pasha was harassed by doubts and fears; but at last, without receiving the authority of the Porte, and disregarding the attitude of England, he signed the final concession for the canal on January 5, 1856. It is said that he was influenced by the assurance that the canal would redound to his immortal honor and glory. Be that as it may, it is, in a measure, a monument to the generosity of the good-natured viceroy, whose name, at least, is perpetuated by the port at the Mediterranean terminus.

In 1858 de Lesseps launched his *Compagnie Universelle du Canal Maritime de Suez*, with a capital of £8,000,000. More than half of this amount was subscribed for — the greater part being taken in France — and in 1860 Said took up the remainder, amounting to £3,500,000. De Lesseps began the work in the spring of 1859, although the consent of the Porte was not given until 1866.

The attitude of England toward the canal remained unfriendly. When the engineering question had been settled, and the feasibility of constructing the canal proved, the English began to assert that it could not be made to pay. The policy of opposition has been kept up even to the present day. As the question of the canal is to be dismissed now, and to be taken up

[1] The whole policy of opposition, as manifested by England, is thus humorously, but faithfully summed up by Mr. D. Mackenzie Wallace, in his "Egypt and the Egyptian Question": "The consular representative of England does not approve the scheme,' and warns his Highness against the insidious counsels of the plausible Frenchman. The cutting of a canal may be advantageous for humanity, or rather for that portion of humanity which happens to have a commercial fleet and seaports on the northern shores of the Mediterranean; but it would be ruinous for Egypt, because it would entirely destroy the lucrative transit trade, which might, on the contrary, be increased by continuing to Suez the Alexandria-Cairo railway. Then his highness must remember that Lord Palmerston — terrible name in those days! — is opposed to the scheme, not from selfish motives, but because he fears that it is merely a first step to a French occupation, by which, of course, his Highness would be the principal loser. Lastly, there is the little matter of physical impossibility. The most competent English engineers — and his Highness is too well-informed a man not to know that English engineers are much more practical and trustworthy than French ones — have declared with one accord that the proposed canal, if ever made, will remain merely a dry ditch." (p. 308.)

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again only incidentally, as in its financial bearings upon the relation of England to Egypt, it may be well to notice how England has persisted in what appears a jealous opposition toward the *Compagnie Universelle.* A single quotation will show how the London papers sought to bring the canal into discredit at a time when its success was still a matter of doubt: "The Peninsular and Oriental Company's steamer 'Poonah,' with the Indian and China mails, which arrived at Southampton yesterday, experienced, while in the Suez canal, *a severe sand-storm, which commenced at sunrise and continued, more or less furious, until five in the afternoon.* During the storm she laid [!] right across the canal powerless. *Tons of sand were thrown on the deck,* and the masts and gear were covered with a thick coating."[1]

Of late years the British ship-owners have come to wish for a canal of their own, and they are inclined to dispute the claim of the *Compagnie Universelle* that it has the sole right to control the canal question until the ninety-nine years of the concession are up. The British government, however, advised by the lord chancellor and the law officers of the crown, has been forced to declare that the company's claim is well grounded. It is to England's credit that the opinions of such men as R. T. Reid, Q. C., M. P., prevailed. This honorable gentleman said:

> The claim of M. de Lesseps and his company to equitable treatment is well known, and is more creditable to him than to the intelligence of our past rulers. The Suez canal is the work of his lifetime. He undertook it under circumstances of great discouragement. He completed it in spite of the disapproval of the British government. And when it has proved an immense success, and the navies of the world are reaping the benefit of his speculation, we are invited to find a flaw in his title, to chop logic as to the meaning of his concession, and to creep out of a difficulty which is a mere matter of pounds, shillings, and pence, by refining upon words in defiance of the intention. Such conduct would be unworthy of the British government. . . . The canal is of enormous value to our shipping interests. It has saved us millions upon millions of pounds by halving or nearly halving the route to India, and greatly

[1] Quoted from the London papers of May 1, 1876, by Edward De Leon, in his "The Khédive's Egypt," p. 36.

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reducing the distance by water between us and our entire Eastern dominions. It is admittedly of the utmost political advantage to us with reference to India. This vast profit, infinitely exceeding anything gained by the canal company, has been acquired without risk of any kind to the British government, and, indeed, has been forced upon us against our will by the enterprise of M. de Lesseps. When the company who bore the brunt of the outlay ask for an infinitesimal part of the profit conferred upon England, and ask it in the form of dues stipulated before the outlay was incurred, we are invited to beat them down by the threat of a rival canal. This would not be creditable in an individual. It would be wholly unworthy of a great nation.[1]

And so the great nation decided.

But to return to Said Pasha. Having described his relations to the Suez canal, it only remains to record that he died in 1863. But, in passing, it must be noticed that a financial cloud, that was destined to blacken the Egyptian sky, and to let loose its bolts of distress and bankruptcy on the land of the Nile, was already discernible on the horizon. Said had exhausted the surplus accumulated by Abbas, and had left a debt of more than three millions sterling. How this was doubled, quadrupled, and doubled again under his successor, the sequel will show.

Ismail's Ambitious Designs.

Ismail, the son of Ibrahim, the son of Mehemet Ali, succeeded Said. It is said that Abbas, long before, had been very jealous of him. He must, at least, have disliked him heartily; for the two men had nothing in common, and everything that the one shunned the other courted. While Abbas was ruling Egypt with a rigorous economy, Ismail sought the more congenial atmosphere of Paris. He obtained, in one capital and another, an intimate acquaintance with the civilization of the West, and stored his mind with all those pictures of European development that, though the result of centuries in Europe, he thought might be reproduced in Egypt within his lifetime. Having secured thus "a European education," Ismail returned

[1] *The Contemporary Review*, August, 1883.

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to Egypt, after the accession of Said, and received from him a governmental portfolio. He seems to have had the entire confidence of the viceroy, for twice he acted as regent. He commanded, also, the year before Said's death, an expedition to the Sûdan. On his accession in 1863, therefore, Ismail was a man of experience — such experience as should have given him exceptional qualification for a ruler. But greater than all the wisdom, was the ambition that his observation had begotten.

It seemed as if Ismail's dreams of wealth and power were to be realized immediately upon his accession. Our Civil War was to furnish the means to this end. Europe had depended upon our Southern states for her cotton, and when, by the war, the supply was cut off, there followed throughout Europe what has been called "a cotton famine." Especially in England the want threatened to become a great distress. The factories were closing, and legislators and economists were puzzled to find a way out of the danger. The shrewd Ismail, at this juncture, was not slow to perceive that the seed introduced into Egypt by his grandfather might bring him the coveted wealth, and he bent his entire energies to the production of cotton, borrowing money to buy the implements and tools, to secure the proper irrigation, and planning for work on a grander scale than the fellah at his shadûf had ever dreamed of. Ismail's success was greater than he could have expected in his most visionary moments. The soil of the Nile valley seemed admirably suited to the new industry, and every yield was enormous. The fellahîn, the most conservative people under the sun, forsook their lentils, their millet, and their wheat, and hastened, in their humble way, to acquire wealth after the manner of their lord and ruler. And they prospered as their race never has been known to prosper from the time when their remote ancestors were the pyramid-builders of the Pharaohs, down to the present day. It was the Golden Age of modern Egypt. In three years the exports rose from four and a half millions to more than thirteen millions sterling. As is usually the case with those who enjoy unaccustomed and unexpected affluence, neither the viceroy, nor the great pashas, nor the lowly fellahîn, made wise use of their

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prosperity. Their extravagances increased with their wealth. The viceroy thought that the influx of gold would be permanent, and he spent and wasted accordingly; the pashas believed that the vast estates that favoritism had bestowed upon them would continue to produce in luxuriance the white flower that was so easily convertible into yellow gold, and they lived their voluptuous life of Parisian and Oriental excess in their daira palaces; and the fellahîn thought not and cared not, so long as their burdens were light and they could enjoy the sensual life that the Prophet Mohammed allowed them.

They all counted in vain. Our Civil War had come to an end, and the Southern states were again supplying the markets of Europe; the naturally fertile valley of the Nile, denied the necessary rotation of crops or the chemical fertilizers that the agricultural science of to-day substitutes, had been ruinously exhausted; and as a consequence the Golden Age was ended. All the extravagances reacted upon the fellahîn. The viceroy could not or would not contract his expenses, and, of necessity, he turned to the money-lenders and the taskmasters. The latter ground down the fellahîn to a life that was nothing more than existence. Exorbitant taxes were forced from them with the aid of the kûrbash, and their condition was more miserable than before their recent prosperity. At this time the cattle murrain made its appearance in the Nile valley, and the loss was overwhelming, and, of itself, sufficient to impoverish the people for a time. The Egyptian government, slow usually to give such assistance, was obliged to expend £5,000,000 to aid the suffering fellahîn. But, to offset the gift and in lieu of unpaid taxes, the land of the unfortunates was appropriated, not by the government, but by the viceroy himself. In the years that followed he became master, in this fraudulent manner, of one-fifth of the cultivable land of Egypt.

As the condition of the fellahîn grew worse, the extravagances of Ismail seemed to increase. In 1866, at a time when he should have economized to the last degree, not only to relieve his country but to pay his own debts, which were already of a threatening size, Ismail, yielding, as ever, to his inordinate

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ambition, purchased the title and rank of *khédiv-el-misr* (king of Egypt) from the sultan. The firman that granted these honors and raised the limit of the Egyptian army from eighteen thousand to thirty thousand men, cost Egypt the increase from three hundred and seventy-six thousand to six hundred and seventy-five thousand pounds of yearly tribute to the Porte. From this time on the Khédive Ismail, through the most prodigal use of money-bribes and presents, secured a succession of firmans from the Porte. A firman of 1867 empowered him "to make laws for the internal government of Egypt, and to conclude conventions with foreign powers as to customs, duties, and the police, postal and transit services. A firman of 1872 conceded to the khédive the power of contracting loans without the sultan's authorization"[1] — a power how used and abused! — and established the law of primogeniture in his family.[2] A firman of 1873, "which Ismail obtained by bribery at Constantinople on a more than ordinary scale, removed all limit from the numbers of his army, and empowered him to conclude conventions with foreign states concerning all internal and other affairs of Egypt in which foreigners might be con-

[1] John Westlake, Q.C., LL.D., England's Duty in Egypt, *The Contemporary Review*, December, 1882.

[2] This part of the firman, as it reads, "establishes the line of succession by order of primogeniture in Ismail's family — his eldest living brother, or this brother's eldest son, succeeding in case of failure of direct male issue, to the exclusion always of the female line. In the case of the heir being a minor (*i.e.*, under eighteen) on the khédive's death, he is at once to assume the vice-regal title under a council of regency. If, in his will, the late khédive have not nominated this council, the ministers of the interior, of war, of foreign affairs, of justice, the commander-in-chief of the army, the inspector-general of the provinces, in power at his death, will form the council of regency, and will elect a regent from their body. Should the votes be equally divided in favor of two names, the regency falls to the minister holding the more important department, who will govern with the council of his colleagues, when their powers have been confirmed at Constantinople by an imperial firman. The regent and the council of regency are immovable before the legal expiration of their powers, *i.e.*, before the majority of the khédive. Should one of the council die, the survivors have power to elect a successor. Should the regent die, the council will elect another from their body and a successor to the place he will leave vacant in the council." (Egypt under Ismail Pasha, edited by Blanchard Jerrold, pp. 71, 72.) This law reads well, and remains unchanged to-day. It did not provide, however, for such a forced abdication as occurred in 1879.

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cerned."[1] So much for Ismail's expensive relations with his suzerain. They had brought him, it is true, a power such as Mehemet Ali had dreamed of after the fall of Acre, but they had helped drag him deeper into the meshes of a financial snare, from which he was destined to escape only with the loss of all the powers he had inherited or so dearly purchased.

Ismail's extravagances at home were equally enormous. When cotton was no longer recognized as king in the Nile valley, the khédive quickly proposed to substitute the culture of sugar. Not only did he proceed to cultivate the cane, but he planned to manufacture the sugar. For this purpose he built nineteen factories and refineries, and imported the best of machinery from Europe. This attempt to convert agricultural Egypt into a manufacturing country must always be regarded as the crowning farce of Ismail's reign. The country may be said to be absolutely without fuel; for there are no coal mines, and the tax-paying trees are too few and far too valuable to serve as fire-wood. With all his advanced ideas, the khédive seems not to have learned the first principles of political economy. Besides the building of the factories, a railroad was required to make them accessible. This was constructed from Cairo to Assiût at vast expense. Canals, also, were needed for the proper irrigation; and they, of course, involved another great outlay. But there was never any hesitancy on account of expense; and, the money being borrowed, the works were pushed ahead.

It would not be right, however, to attribute all the debts of Egypt, incurred during Ismail's reign, to his inordinate extravagance. The cattle murrain, for example, cost the government and people dear, as has been seen, but not through any fault of Ismail. In another matter the khédive laid a heavy burden on the government, but at the same time he won, and deservedly, the gratitude of his people and the applause of civilized nations. Said Pasha had promised to furnish the Suez canal company with a large amount of labor each year for the construction of the canal, and this labor was to be provided by the *corvée*,

[1] Westlake, England's Duty in Egypt, *The Contemporary Review*, December, 1882.

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a system of forced service, in use as far back certainly as the age of the pyramid-builders. But it was disastrous to the agriculture of the country to have twenty thousand of the fellahîn torn from their homes each month and forced to work on the canal. Ismail recognized this fact and abolished the *corvée*. It is generally admitted that he was influenced by humanitarian motives. And well he might have been! Our own most dreadful tales of slavery could be paralleled with the sufferings and tortures of those miserable mortals who were wrested from what little they had to make them happy in the fertile valley to endure the privations and almost certain death of that desert highway. Whatever the motive here, Ismail must always be credited with having performed a noble action. The canal company, deprived of the promised assistance, naturally demurred. This and a few other disputed questions were finally referred to the Emperor Napoleon for arbitration, and he awarded the company the somewhat exorbitant indemnity of £3,360,000. This was in 1864. In 1866 Egypt re-purchased for the sum of £400,000 a domain that had been sold to the canal company five years before for £74,000. It was a modest advance! Of course such extraordinary expenses as these necessitated new loans. All the loans that Ismail raised are themselves so extraordinary that their details must be noticed as well as the methods that the khédive employed in his endeavors to bear the burden of his obligations.

Before proceeding to the loans it will be well to form an idea of the revenue of Egypt under Ismail. To do this it will be necessary to consider the taxes somewhat in detail, although it is impossible, as Mr. Cave and Messrs. Goschen and Joubert found, to get perfectly accurate and trustworthy statistics on the subject, owing to the unsystematic and dishonest methods of a treasury system that was nothing more nor less than a hierarchy of swindlers, in which each officer got as much from the one below him and gave as little to the one above as was possible. What the amount of the taxes was before Ismail's time, one can only guess; but we may be sure that they never varied much from the utmost that kûrbash and

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extortion could raise.[1] The land tax, immediately after his accession, was increased by twenty-five per cent. This tax was again and again increased, until, in 1871, the famous *mûkabala*[2] was invented. This was a voluntary additional tax of fifty per cent for six years, which, being paid, would free the land of the one assuming the self-imposed obligation from half the grain tax in perpetuity. The mûkabala was found to yield so readily to the demands of the moment — and Ismail lived in the present, borrowing no trouble from the thought of obligations to be met in the future — that it was *enforced* in 1876, and the period, at the end of which exemption should take place, was increased to twelve years. No tax ever met with such bitter denunciation as the mûkabala did from its inception to the day of its abolition. It was bad for the payer and bad for the payee. "A ruinous financial device," says Blanchard Jerrold, "seeing that for a sum of in all less than twenty-seven million pounds, spread over a dozen years, is thence afterward surrendered for all time nearly two million five hundred thousand pounds of its [Egypt's] surest and most easily collected revenue."[3]

In order to form an idea of what the yearly revenue of Egypt was from 1870 to 1875, it is necessary to consult the reports that were made after that time; for up to 1875 there had been no attempt to estimate the revenue in detail. As the agricultural conditions did not vary much from year to year, the

[1] That the condition of the tax-payer has not changed much in three thousand years may be gathered from a papyrus in the British Museum, containing a part of the correspondence between Ameneman, the chief librarian of Rameses the Great, and the poet Pentaur. Ameneman writes: "Have you ever represented to yourself, in imagination, the estate of the rustic who tills the ground? Before he has put the sickle to his crop, the locusts have blasted part thereof; then come the rats and birds. If he is slack in housing his crops, the thieves are on him. The horse dies of weariness as it drags the wain. The tax-collector arrives; his agents are armed with clubs; he has negroes with him who carry whips of palm-branches. They all cry: 'Give us your grain!' and he has no way of avoiding their extortionate demands. Next, the wretch is caught, bound, and sent off to work, without wage, at the canals; his wife is taken and chained, his children are stripped and plundered." — Quoted by Blanchard Jerrold, Egypt Under Ismail Pasha, p. 164.

[2] *Mûkabala* = compensation.

[3] Egypt Under Ismail Pasha.

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revenue during 1877, for example, would be approximately equal to the revenue during 1872 or 1873. This analogical reasoning is allowable, but not very satisfactory; for, unfortunately, even the *official* estimates of Europeans appointed for the purpose are found to vary greatly. The official estimate of Mr. Goschen, made in December, 1876, placed the year's revenue at £10,804,300. Mr. Cave's estimate for the same year was a little over ten and a half millions. Mr. Romaine gives the official revenue, month by month, for 1877, reaching a total of £9,350,274 for the year. The Cairene committee, in 1878, placed the total income of the khédive's government at about eleven and a half millions; but they considered this estimate low, and thought that, if it had been possible to count all revenues, the sum total would not have been less than thirteen millions sterling. This may readily be believed, if we may trust, approximately, the statement of Ismail Sadyk (the *mûffetish*, or "lord high treasurer" of the khédive, and one of the most notorious rascals that ever plundered a state and people), that he had raised by taxation in one year the sum of fifteen million pounds. But some estimates varied as widely in the other direction, and placed the revenue even as low as seven and a half millions. The extremes are far apart.

It will be interesting to separate one of the total estimates into its constituent parts; and for this purpose we may take the report of the Cairene committee. They placed

The land tax	at	£7,346,219
The date palm tax	"	211,046
The house, shop, and mill taxes	"	28,195
The poll tax[1]	"	630,204
Licenses and patents[2]	"	798,253

MISCELLANEOUS TAXES.

1. Succession or transfer duties on legacies, mortgages, *etc.*	£103,685
2. Stamp tax (no statistics).	
3. Salt tax[3]	400,000

[1] This tax was divided into three classes: *viz.*, 40, 30, and 15 piasters. The collectors, however, were instructed to produce an average of 30 piasters ($1.50) a head.

[2] These were imposed on all servants, operatives, tradesmen, and merchants.

[3] Nine piasters imposed on every man, woman, and child over seven years of age.

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4. *Octroi* and road duties on produce, fodder, and building materials[1]	£328,872
5. Customs	639,000
6. Navigation dues	110,185
7. Duties on fisheries	33,548
8. Law taxes	44,392
9. Tobacco tax	106,777
10. Tax on cattle sales	45,402
11. Sheep slaughtered for food	14,769
12. Animal tax	8,479
13. Stamp tax on manufactured goods	18,000
14. Payments of railways into Public Debt Department	602,990
Total	£11,470,016[2]

From the foregoing notes and figures it will be seen that it is almost impossible to exaggerate the extortionate character of taxation in Egypt a decade ago. But it should be noticed in passing that the land of the natives only was taxed; by a monstrous injustice — an injustice that continues to the present day, though there is just now a prospect of its being remedied — the European property-holders have never paid so much as a brass farthing into the state treasury on the land they have held.

Whether, now, we place the yearly revenue at the lowest estimate, seven millions sterling, or at the highest, thirteen millions, or midway between the two, the fact always remains the same — that Ismail was unable to live within his income. With the same revenue Mehemet Ali would have made Egypt independent of Turkey, and himself the champion of all Islam. Even the gay Said would have been at a loss for ways to squander such undreamed-of means. But with Ismail it was different. As we have seen, he could not forget the splendors of European courts, nor cease to envy the civilization of western

[1] This figure the committee considered small, since irregular government expenses were taken out of the *octroi* receipts, as, for example, the salaries of a *corps de ballet!* When, later, Egypt came under European control, the comptroller general encountered much opposition by his refusal to pay such salaries from such a fund.

[2] Other taxes, as on fire engines, ferries, jewelry, burials, marriages, tolls on bridges, and exemption from military service, were not counted, owing to absence of trustworthy statistics.

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countries; nor could he contract the extravagances he had learned in the days when "cotton was king" in Egypt. If he could not live and flourish and build and spend on the strength of his internal resources, he knew that there were bankers and money-lenders in Europe who would consider the yearly overflow of the Nile the best of security. The story of his transactions with these unbelievers forms the most important chapter in the modern history of Egypt; but the story is devoid of romance; it is as bold and bald and true as the working of a natural law. For the state, as for the individual, when debts are contracted to pay other debts, when further sums are borrowed to pay those, and when this system of discharging obligations is continued, the end is ruin. In the case of Egypt, the ever impending ruin has been long averted, owing as much (or more) to the political importance of the country as to its inherent wealth; but the burning question of that land to-day is the question of finance; for the debts that are due to the follies of Ismail still stand, an unmanageable burden. And this is how the first khédive brought about the financial disaster, and his own downfall.

The Road to Ruïn.

It will be remembered that Said had left a debt of about three millions sterling. To be exact, he had effected in 1862 a seven per cent loan in the European market of £3,292,800.[1] Of course he did not receive this amount entire, for the commission rate of issue, *etc.*, reduced the sum paid into the Egyptian treasury to £2,500,000. But this loan did not prevent Said from leaving a further legacy of liabilities, which necessitated a second loan within a year after his death. The amount of this one, which was raised in England, was £5,704,200. It yielded to the treasury only £4,864,063. And still the indebtedness was not covered. Up to this time the financial troubles had come through no fault of Ismail's. But in 1866 he had begun to push the sugar industry; and, not having laid by

[1] For facts and figures I depend chiefly upon J. C. McCoan's "Egypt As It Is,"

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any of the enormous revenues from cotton, he was forced, in order to carry out his railroad scheme, to contract a seven per cent loan of £3,000,000, which netted him £2,640,000. The cattle murrain, the abolition of the *corvée*, and his extravagances called for another loan only two years later. The nominal amount of this loan was £11,890,000; but heavier terms had to be made; for, though a seven per cent stock, it was issued at seventy-five, and yielded, after the usual deductions, only £7,193,334. In other words, the total annual cost of this loan was more than thirteen per cent. "The khédive, by this time," as Mr. McCoan remarks,[1] "was fairly on the road to ruin." But the national credit was still good, since the floating debt had been covered by this last loan.

Ismail seems not to have suspected the perils ahead. It was his aim to make a civilized country even out of uncivilized materials, and to develop trade even where natural resources were wanting, let the cost be what it might. It certainly was great; it was enormous. The outlay, even if the revenue of

and upon Mr. Cave's Report of 1876, from which the following concise table is taken:

LOAN OF	To be paid off in	Nominal amount of loan, but real debt of state.	Charge on nominal amount.			Amount realized.	Real charges on amount realized.		
			Int.	Sink'g fund.	Total.		Int.	Sink'g fund.	Total.
		£	pr c.	pr c.	pr c.	£	pr c.	pr c.	pr c.
1862	1892	3,292,800	7	1	8	(*a*)	. . .	. . .	. . .
1864	1879	5,704,200	7	3.87	10.87	4,864,063	8.2	4.5	12.7
1866	1874	3,000,000	7	. . .	. . .	2,640,000 (*b*)	8	18.9	26.9
1868	1898	11,890,000	7	1	8	7,193,334	11.56	1.68	13.24
1873	1903	32,000,000	7	1	8	20,740,077	10.8	1.56	12.36
Daira taken over by the state.		55,887,000				35,437,474			
1866	1881	3,000,000	9	3.27	12.27	3,000,000 (*c*)	. . .	. . .	12.27
1867	1881	2,080,000	9	3.4	12.4	2,080,000 (*c*)	. . .	. . .	17.04
Daira loan of Ismail.						5,080,000			
1870	1890	7,142,860	7	2.35	9.35	5,000,000	10	3.36	13.36

(*a*) No particulars of amount realized.
(*b*) Railway loan repaid by six annual payments of £500,000, equivalent to a sinking fund of 18.9 per cent.
(*c*) No particulars of amounts realized, but probably the whole.

[1] McCoan, Egypt As It Is, p. 142.

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the country had permitted it, would have been foolish extravagance; but in view of Egypt's financial condition, it was nothing less than reckless robbery. The fellahîn — the people of Egypt — were the sufferers. The kûrbash exacted more extortionate payments than ever; but all to no purpose. By 1873 the floating liabililities, paying nearly fourteen per cent interest, amounted to about £26,000,000. The Messrs. Oppenheim, who had secured the loan of 1868, now proposed to fund the entire mass of debts in a seven per cent loan of £32,000,000. This offer, disastrous in its results, was accepted. The Egyptian government received in cash only £11,740,077, the remainder of the amount realized, £9,000,000, being paid in bonds of the floating debt, which the contractors bought up at a heavy discount and gave over to the Egyptian government at 93. There was, to say the least, a good deal of Shylockism shown by the money-lenders of the West in their financial relations with Egypt. But if they were knavish, Ismail was not altogether simple. Looking at the figures that tell the story of "this wicked waste of a country's resources," as Mr. McCoan calls it, we see that from loans amounting to £58,887,000, the Egyptian government received only £35,437,474. At the end of 1875 the treasury had repaid £29,570,995 in interest and in sinking fund. Was so much money ever paid for so little gain?

There were other loans than those above mentioned. The daira, the immense personal estate of the khédive, afforded excellent security for supplementary loans. The first of these was negotiated in 1866, its amount being £3,387,000. The following year the khédive compelled his uncle Halim to sell to him his inherited estate; and to pay for the property obtained by this enforced sale, the so-called "Mustapha Pasha loan" of £2,080,000 was negotiated. Still another daira loan of more than seven millions sterling was raised in 1870 at seven per cent, the stock being issued at 75. Only £5,000,000 was handed over to the borrower. Thus the same story is told with the private as with the public loans.

The question now was: How long could the ruinous rate of interest be paid on these enormous debts? Up to 1875 it was

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regularly paid, and the credit of Egypt was good. But the crisis was now near at hand. The stock of the great loan of 1873 was quoted at 53 in the London market, and the Cairene treasury was almost empty. Even Ismail Sadyk, the mûffetish, with all his tortures and threats, could not get piasters enough from the fellahîn to meet the demands that were measured by hundreds of thousands of pounds. And yet he was ordered to find money to pay the December dividend. At this juncture the khédive appealed to England to rescue Egypt from ruin; and produced, as his last card, the 176,000 Suez canal shares, held by his government. The mûffetish was offering the same securities in negotiations with the bankers of Paris and Alexandria, and with the *Crédit Foncier* of France, in his attempt to force upon them new treasury bonds for £16,000,000 at fifteen per cent interest. After a series of advances and retreats on the part of the English and the French governments, Disraeli's government finally telegraphed to the khédive, in December, 1875, that England would give four millions sterling for the shares in drafts on Rothschild. The offer was eagerly accepted, and the crisis was tided over. The shares of the '73 loan in London rose twenty points at a jump, but after a few days they were quoted at 61, midway between the points of utmost depression and inflation. A more vital interest in the affairs of Egypt was now given to England than she had before possessed. She had gone thither, in the first place, to further the demands of her commerce; she had then manœuvered for the protection of the interests of the British bondholders; and now, in addition to these undertakings, she was to guard the rights that this purchase gave her, and increase the obligations that it heaped upon Egypt.

Four million pounds, as Ismail soon found, could not stem the tide of disaster for long. Everything worth it had been mortgaged, and the mûffetish was offering treasury bonds to the extent of two hundred thousand and three hundred thousand and even four hundred thousand pounds in return for cash advances of one hundred thousand at twenty per cent. A few were taken, and by heavy sales of daira sugar and corn the

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demands were satisfied for a time. The khédive now invited England to investigate the financial condition of his country, and Mr. Stephen Cave, M.P., was sent out for this purpose. Nubar Pasha, the foremost of Egyptian statesmen, was called to the cabinet, and at the beginning of 1876 everything had a reassuring aspect. But within three months Nubar had resigned, and Disraeli, to the consternation of bondholders, had announced in Parliament that the khédive requested that Mr. Cave's report be not published for fear of its effect upon Egyptian finances. But this request was disregarded. The effect of the report, however, was more favorable to the khédive than he expected, owing to the somewhat rose-colored view Mr. Cave took of the financial outlook.

> Egypt [he wrote] may be said to be in a transition state, and she suffers from the defects of the system out of which she is passing as well as from those of the system into which she is attempting to enter. She suffers from the ignorance, dishonesty, waste, and extravagance of the East, such as have brought her suzerain to the verge of ruin, and at the same time from the vast expense caused by hasty and inconsiderate endeavor to adopt the civilization of the West.

He read the causes of Egyptian difficulty aright. But he was wrong in estimating that the yearly revenue from 1876 to 1885 would be more than double the cost of the administration. To meet the necessities of the government, he proposed another unification of all debts, exclusive of three of the earliest and smallest loans which were to be paid off by the operation of the mûkabala. The consolidated debt, amounting to £75,000,000, was to bear interest at seven per cent, and to be redeemable in 1926. The project, however, was not carried out.

The Khédive Ismail, in the meantime, had succeeded in getting the greater part of his floating debt taken up in France. That the holders had been duped was evident before the end of March (1876), for there was no money in the Egyptian treasury to meet the April dividends, and the khédive was appealing for aid to the English and French governments. His overtures were flatly refused by England; but when France realized that the *Crédit Foncier*, the second financial institution of the land,

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was in a strait in consequence of its relations with Egypt, a cabinet council was summoned in Paris, and on March 31 the April dividend was dispatched to London. And again the impending disaster was averted.

Mr. Cave's scheme for the unification of the debt fell through, as above noticed, although coupled with certain measures of reform, which provided for a regular control of the revenue under the administration of Europeans and natives, and for the establishment of debt and audit officers. The cause of failure was that nominations were left in the hands of the khédive, who was himself controlled by the corrupt mûffetish, Ismail Sadyk. France now proposed a financial scheme; but this also failed of adoption. In November, 1876, however, the English and French bondholders united in sending to Egypt a joint commission, consisting of Mr. Goschen, M.P., and M. Joubert, to solve the financial problem. Their labor resulted in the khédive's issuing a decree, November 18, 1876, that remodelled the debt on the following basis:[1]

Title.	Amount.	Interest, etc.	Security.
Unified,	£59,000,000	£4,130,000	General revenues.
Preference,	17,000,000	886,000	Railways, *etc.*
Daira,	8,825,000	450,000	Khédive's estates.
	£84,825,000	£5,466,000	

The reforms of November 18 secured a substantial power to European comptrollers, and the downfall of Ismail Sadyk, who now disappeared from the face of the earth in the mysterious way common to the Orient. He left an immense property, which included three hundred women in his harem, two hundred and fifty men-servants, £600,000 in money, and 30,000 feddans[2] of land. The mûkabala, which would have been abolished if the unification proposed in May had been accepted, was retained by the Messrs. Goschen and Joubert in a slightly modified form.

Those who fancied that plain sailing was now in store for the khédive and the bondholders were again doomed to disappoint-

[1] M. G. Mulhall, Egyptian Finance, *The Contemporary Review*, October, 1882.

[2] A feddan is about equal to an acre.

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ment. Within a few months it was apparent that the financial state of affairs was as bad as ever. The ordinary expenses were augmented by a special tax of two shillings an acre to assist Turkey in the war against Russia. Egypt, backed by England and France, whose interest it was to have all revenues applied to the public debt, for a time resisted the pecuniary demands of the Porte, though she told the Turkish envoys that she would forward troops to the seat of war if the Porte would bear the expenses of transport and maintenance. The new Egyptian parliament, however, at last voted the special war tax, and ten thousand troops were sent at the expense of Egypt.

During 1877 the interest on the loans was raised by collecting the taxes with all the old-time cruelty (Mr. Mulhall says "the fellahîn were bastinadoed even more than before"; but that was not possible) and as much as nine months in advance. This ruinous system, of course, brought greater difficulties with each pay-day; and at the beginning of 1878 the outlook, to say the least, was most doleful. It was at this time that the exiled Prince Halim, the uncle of Ismail and the most enlightened, perhaps, of the descent of Mehemet Ali, wrote a letter of advice to Ismail from Constantinople. The letter, which bears the date of March 4, 1878, is worth quoting, at least in part. He wrote:

1. Place the financial administration of the country in the hands of Europeans chosen by the interested powers; such administration alone having the power to appoint and dismiss all officials connected with the finance of the country.

2. The financial administration thus constituted, and all its dealings being carried on in broad daylight, you must appoint a special inquiry commission, chosen by the high officials, to establish an equitable repartition of taxes, which are now arbitrarily distributed and levied.

3. All property belonging to the princes and princesses shall be made over to the state, so as to be used in payment of all debts.

4. The revenue of all the dairas, the khédive's and his family's, being thus devoted to the paying off of public and private debts, the civil list, the amount of which shall be agreed upon by the interested powers, will support the khédive and his family.

5. The reform tribunals, having over them a sovereign free from all personal interests, and by whose care all the judgments which they pro-

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nounce shall be carried out, will be empowered, over and above their present jurisdiction, to try causes between natives, if the latter shall so choose it.

These five articles, says Mr. Jerrold,[1] "became the basis on which the discussion of Egyptian affairs turned." The first article of reform had already met with Ismail's apparent approval, the state revenues having been placed in the hands of two "comptrollers-general," one English, and the other French. They were appointed for five years, with almost unlimited powers in the domain of finance. But the step was taken reluctantly; for the khédive realized that, to quote the words of Mr. Justin McCarthy,[2] "when a country has once accepted an investigation of its finances by foreign powers, and given the practical control of its treasury into the hands of foreign representatives, its claim to independence can hardly fail to be regarded as signally diminished." Still more reluctantly, we may well believe, did the khédive yield to the demand of the commission to hand over his vast private estates to meet the daira coupons. But he had been forced into both of these actions by the troubles of 1877. Early in 1878 the khédive made a bold effort to secure foreign favor, and quiet the discontent among the money-lenders of Alexandria. The Egyptian government had announced, in 1877, that it could not pay the existing high rate of interest on the public debt; but before the bondholders would consent to any reduction, they demanded the appointment of a commission to examine into the receipts and expenses of the government. The khédive, in January, 1878, allowed an investigation of receipts; but would permit no examination of expenditures. Two months later, however, he issued the following decree:

We, Khédive of Egypt — with respect to our decree of the 27th of January, 1878, instituting a superior Commission of Inquiry, considering that it is the duty of that Commission to prepare and submit for our sanction regulations to secure the regular working of the public services,

[1] Egypt Under Ismail Pasha, p. 256.
[2] England Under Gladstone, ch. xiii.

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and to give a just satisfaction to the interests of the country, and to the public creditors — have decreed and do decree:

ARTICLE 1. The widest powers are given to the Commission we establish.

ART. 2. The investigation of the Commission of Inquiry will embrace all the elements of the financial situation, always respecting the legitimate rights of the Government.

ART. 3. The ministers and officials of our Government will be bound to furnish directly to the Commission, at its request and without delay, all information required from them.

ART. 4. There are named as members of the superior Commission of Inquiry: President, M. Ferdinand de Lesseps; Vice-President, Mr. Rivers Wilson; Vice-President, his Excellency, Riaz Pasha; M. Baravelli; Mr. Baring; M. de Bligniéres; M. de Kremer.

ART. 5. A credit necessary for the expenses of the Commission will be opened on the budget of 1878, in accordance with the report which the President will present us.

ISMAIL.

CAIRO, March 30, 1878.

On August 20, Mr. Rivers Wilson presented the report of the commission of inquiry. The report considered first the system of accounts employed by the Egyptian government. It then explained the system of taxation, and discussed the *corvée*, the military conscription, and the water laws. The second part of the report was taken up with the estimate of the non-consolidated liabilities. The amount of floating debt to be settled was found to be £6,276,000. The gross expenditure for 1878 was estimated at £10,405,665, and the gross receipts at £7,819,000. Adding the difference between receipts and expenditures, £2,586,665, to the amount of floating debt, the total deficit for 1878 would appear to be £8,862,665; but this sum was reduced to a little more than six millions sterling by deductions for security against partially guaranteed debts, and for amounts nominally due to the dairas, but before that time surrendered. There was immediate need, therefore, for about six millions. The report closed with the following suggestions of reform:

That no taxes shall be imposed or gathered without a law, authorizing them, being promulgated; that future legislation may extend the taxation to foreigners; that there shall be an efficient control over tax-collectors; that there shall be a reserve fund to provide against the

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contingency of a bad rising of the Nile; that there shall be a special jurisdiction for complaints on the subject of the collection and assessment of taxes for the special protection of the natives; that existing vexatious taxes shall be abolished except for works of public utility; that the obligation to military service shall be placed under restrictions; and that all the immovable property of the different dairas shall be independently managed by a special administration for the benefit of the creditors both of the state and the dairas.

These were excellent recommendations, though there was something very naïve in the suggestion that "there shall be a *reserve fund* to provide against the contingency of a bad rising of the Nile." It would have been as easy to resolve that, if the river failed to rise, copious rains should fall; for reserve funds are as rare in Egypt as rain-storms in the desert. Not the least good of the recommendations was that providing that foreigners should be taxed; a measure that the Westerners have always been shamefully slow to encourage. The reforms contained also a plan for the cadastral survey of Egypt, which was recognized in England, in France, and in Egypt, as just to the fellahîn and as the treasury's only safeguard against fraud and corruption. The khédive accepted the report on August 23 in a speech expressing entire approval of the work of the commission, appreciation of their services, and determination to carry out the reforms. To show how thoroughly in earnest he was, so he said, he had recalled Nubar Pasha from exile and would entrust him with the formation of a new ministry. The new ministry was composed of the following persons: Nubar Pasha, president of the council, minister of foreign affairs and of justice; Riaz Pasha, minister of interior; Ratif Pasha, minister of war; Ali Mubarek Pasha, minister of public instruction, agriculture and public works. The portfolio of finance was left vacant, but it was soon offered to Mr. Rivers Wilson, who accepted the office with the consent of the British government. This excited the jealousy of France, to appease which the comparatively unimportant office of public works was offered to M. de Blignières. Italy then put in the claim that she should be consulted in Egyptian affairs; but her voice was ignored.

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Before any active steps had been taken toward inaugurating the proposed reforms, Mr. Wilson urged the necessity of another loan to meet immediate demands, and this, although the total debt already amounted to ninety-two millions sterling. But he had no choice in the matter; the loan was imperative. The only unmortgaged property on which a loan could be raised consisted of the daira estates belonging to the khédive's family. These, now, with a rent-roll of £430,000 a year, were handed over to the state, in consequence, not of the advice of Prince Halim, but of the utter necessity of the time. The loan was concluded with the Messrs. Rothschild of Paris, in November, 1878, at the rate of 73. The nominal amount of the loan was £8,500,000, but with the discount of twenty-seven per cent and the commission of two and a half per cent, the net product was only £5,992,000. Thinking that financial affairs could rest for the moment, Mr. Wilson now made a tour of inspection through lower Egypt. The people met him with petitions, which he received with promises of redress. He believed, and they had every reason to believe, the words he uttered in a speech at Tanta.

> A new era [he said] has begun for Egypt. Reforms are already initiated, and if you will only have patience, you can count on their completion. If you have grievances, make them known to us, and you shall be righted. We wish to establish equality and legality in the country, and the law shall no longer be for the rich alone; it shall work for rich and poor alike.

The fellahîn might well have been happy; they had never in their ages of oppression received such assurances before.

But tranquillity was not yet. A number of creditors at Alexandria had put an end to the financial negotiations in a most unexpected manner. These creditors had been watching their opportunity. They had tried some months before to seize the furniture of the palace at Ramleh, but had been foiled by the bailiffs. They had succeeded, however, in obtaining a lien on the very estates that were offered as security for the new loan. It was not surprising, therefore, that Baron Rothschild withheld the amount of the loan. To add to the khédive's

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troubles, the unpaid officers of the army in Cairo were urging their claims. The delay of Baron Rothschild precipitated matters; and on February 18, 1879, a military uprising occurred in Cairo, which nearly cost Mr. Rivers Wilson and Nubar Pasha their lives. While driving from a council of ministers their carriage was beset by a throng of officers, estimated at from four to twelve hundred; their driver was wounded, and they were insulted and forced back into the court-yard of the palace. The khédive attempted to pacify the mob, but they were only dispersed by the force of arms. Nubar Pasha, the next day, offered his resignation. It was at once accepted by the khédive, and again the foremost statesman of Egypt, and the only one worthy the name, according to the Western conception of the term, went into exile. It was immediately claimed in England and France that Ismail had sought to bring about this result by instigating or conniving at the insurrection among the officers. It was generally known that Ismail had a pet aversion to Nubar. They were as different as an honest man and a cunning diplomat could well be, and it is certain that the khédive would not have entrusted Nubar with the new ministry if the influence of England and France had not seemed to demand it. Confidence having been secured, Ismail was ready, and probably only too glad, to break with his prime minister. Nubar appreciated the desperate state of affairs that prevailed in Egypt. He had written to a friend on January 20:

> The everlasting political comedy, or tragedy, is being played on the little stage here, just as it is everywhere else: a lost power sought to be regained, persons interested in not letting it be regained, who yet aid it for personal motives, or to give themselves importance — and not a sou in the Treasury withal. What a situation for the country, for the interested countries, and for your friend![1]

England and France were naturally displeased with the dismissal — for such it was — of Nubar Pasha; and while the commander-in-chief of the Egyptian army was apologizing to Mr. Rivers Wilson for the insult he had received at the hands of the officers, the two powers were preparing a protest to submit to

[1] Quoted from Appleton's *Annual Cyclopædia*, 1879.

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the khédive. Notwithstanding their demand, Nubar was not reinstated; but some of the conditions they imposed upon the khédive were followed in his attitude toward the new cabinet. Ismail's eldest son, Prince Tewfik, had been appointed president of the council, Zulfikar Pasha, minister of foreign affairs, and Mr. Wilson and M. de Blignières had retained their former offices. The important condition that was imposed upon Ismail, was embraced by him in a letter to Tewfik, in which he said: "As the native ministers now form a majority in the cabinet, it is right, in order to restore the balance of power and lend to the intervention of our European ministers all the usefulness possible, that they should be entitled to a veto on all measures they agree in disapproving." This sop thrown to the great powers, was soon counteracted. Egyptian and European influence clashed on the financial question, and Egypt came out first best. It was in this wise: Mr. Wilson, M. de Blignières, Mr. Baring, and the debt commissioners, submitted a plan for the equitable reduction of the claims of all creditors. The khédive opposed this with another plan, giving the bondholders better terms; and he was supported by the native parliament, the pashas, the ulemas, and all the high dignitaries of the land. The counter projects were pushed so hard that, on April 7, Prince Tewfik resigned the presidency of the council, and the khédive dismissed Mr. Wilson and M. de Blignières.

If, now, there was ever a ship of state that sailed between Scylla and Charybdis, it was the unsteady craft that Ismail was trying to guide. If he avoided the rocks on one side, it was only to meet destruction on the other. The wrath of the Egyptians had been averted by the dismissal of the foreigners, and by the same act the wrath of the great powers had been incurred. The French government was in high dudgeon at the offence, and threatened to reinstate her representative by force of arms, and asked England to join her. But England would not agree to any such decisive step. Even had she cared to, she would have found it difficult to spare more troops than were needed at that time to oppose the Boers in South Africa. She preferred, therefore, while waiting for the blood

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of France to cool, to send dispatches to the khédive, demanding a reconsideration of his hasty and unwarranted action. But the khédive was now running things with a high hand. If England would not allow France to send an armed force to Egypt, and did not do so herself, he could laugh at the demands and threats of dispatches. His people said that the unbelievers had brought all the trouble and the ruin upon the fair valley of the Nile, and he decided to cut loose from the Western influence and defy its power. He virtually repudiated the debts and responsibilities of his country in a way that would put our own Virginia to shame, by issuing a decree, April 22, in which he declared that, for the future, he would himself control the finances and regulate the discharge of liabilities. He seemed to be riding on the wave of triumph. The people thought that the day of Mehemet Ali was come again.

But at this moment an unexpected voice of authority was heard. England and France were passing the time in an unavailing effort like that of two horses who cannot pull their load because the one holds back while the other starts, when, suddenly, the German chancellor made a protest that cost Ismail his throne. The German consul at Cairo, on the 17th of May, simply informed the khédive that the interests of German subjects must be protected, let come what might, and that any arbitrary change of system at that time would be considered prejudicial to their interests. What led the astute Bismarck to take the lead at this juncture is, and will probably remain, an enigma.[1] Doubtless he wished France still to be occupied

[1] Of this action and its consequences, Mr. Edward Dicey, writing in *The Nineteenth Century* of February, 1880, says: "How this action came about has never, so far as I know, been clearly ascertained. Germany had a comparatively insignificant interest in the affairs of Egypt. A very small portion of the floating debt was due to German creditors. It is not easy to believe that Germany ever really contemplated any intervention in Egypt, and it is still less easy to understand how she could practically have intervened even if she had been so minded. But the prestige of Germany — her repute of strength, which is to a nation what credit is to an individual — stood her in good stead. The mere fact that Prince Bismarck had declared the khédive could not be allowed to play fast and loose with the interests of German subjects produced more effect than all the dispatches indited from London and Paris; and from the day when Germany pronounced against the khédive it was obvious that

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with foreign affairs, so that her internal development might not be commensurate with Germany's; for at that day, more than now, there seemed a plausible possibility that the grievances and hatred that did not die with Napoleon Third, might seek again a settlement by the sword. Certain it is that the very reasons that have led England to oppose French aggrandizement abroad, have led Germany to favor the same, or, at least, to view with satisfaction the foreign complications that require the exportation of troops and treasure. Against France England has had to protect only her interests abroad, and Germany her interests at home. This may or may not account for the chancellor's unexpected though timely interference; but the fact remains the same that his voice settled the khédive's fate. England, France, Austria, Russia, and Italy followed the lead of Germany, and protested against any interference with the commission of control and the non-execution of the tribunal judgments. At this juncture the proposal to depose the khédive, which the Porte had made to England and France in April, was renewed. This time it was accepted. In place, however, of the sultan's nominee for the succession — Prince Halim, the uncle of Ismail — England and France insisted upon raising Prince Tewfik, the son of Ismail, to the throne. The diplomatic correspondence in discussion of this difference, consumed a week or more in June; but on the 26th of that month the sultan at last yielded and signed the firman deposing Ismail in favor of Prince Mehemet Tewfik. Four days afterward the ex-khédive left the shores and troubles of Egypt behind him for an Italian life of luxury. If he had been a pasha in the feudal days of

the end had come. Meanwhile, the initiative taken by Germany had a result which might easily have been foreseen, and which doubtless was foreseen by those, whoever they may have been, who suggested to Prince Bismarck the advisability of his coming forward as the champion of the Egyptian creditors. It was felt at once in Paris that the time for vacillation had passed. The Republic could not allow it to be said that France was unable or unwilling to protect the interests of her subjects in Egypt, while the insignificant interests of the German creditors were safeguarded by the mere expression of Prince Bismarck's will; and the English government recognized, on the one hand, that France could not be held back any longer, and, on the other, that we could not allow Germany to take into her own hands the forcible solution of the Egyptian question."

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Egypt, he would have forfeited his treasure and his life. As it was, he escaped with the latter, and was given an annual allowance of £50,000.

The character of Ismail Pasha has been variously depicted. He has been painted with all the virtues, on the one hand, and all the vices, on the other, that a monarch can be heir to. Of course neither extreme gives the true picture; and yet there is so much ground for each conception, that one inclines, at first thought, to declare that Ismail was both the blessing and the curse of his country. We think of the development of Egypt during the sixteen years of his reign, of the public works, schools, railways, telegraphs, founded and fostered, and we bless his name; but then we think of the cost, and the curse follows. We cannot agree with those who would shield Ismail by regarding him as the dupe of his wicked mûffetish. He may have been deceived and cheated by the latter, but he could not have been altogether ignorant of the financial schemes of his treasurer. They worked in the same groove and to the same end. They were both ambitious, but were not equally extravagant; for the mûffetish grew rich correspondingly as the khédive grew poor, although the money poured into the hands of the two alike. The mûffetish hoarded while the khédive wasted; but the desire of the miser was no greater than that of the spendthrift, and he must not bear the blame for both. For the financial woes of Egypt under Ismail, some blame, undoubtedly, attaches to the European money-lenders, whose bargains were so disastrous to the khédive. Their rates were often merciless. To prove that all the blame is theirs, Mr. Keay tells *A Tale of Shame*,[1] from the British blue books, in which he supports his arguments with many italics, small capitals and exclamation points. But they are not conclusive. They do not obliterate the fact of Ismail's extravagance.

If we could wholly lose sight of the different acts of the financial tragedy, the glory of Ismail's reign would still be marred by the means and measures he employed in carrying

[1] J. Seymour Keay, Spoiling the Egyptians: A Tale of Shame. Told from the Blue Books.

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out his designs of development. No obstacle could turn him from his plan, and the teachings of economic science were ignored or misunderstood. We have seen how he bent his energies upon the senseless attempt to refine sugar, when his country furnished no fuel to run his dearly bought machines. Western civilization was Ismail's model in all things. It was his ambition, from the start, to implant in Egypt European arts and ideas. He thought he could declare into existence what had been the slow development of centuries in more enlightened lands. Even when he must have known that his country was on the verge of ruin, he boasted that Egypt was no longer a part of Africa, but of Europe.[1] Nothing could be more ridiculous than the story of Ismail's attempt to give his people governmental representation. He did not propose to establish even a paper constitution; and he had no idea of giving up any of his prerogatives, when, in 1866, he summoned the first Egyptian parliament that had assembled since the day of Mehemet Ali.[2] The members of the new parliament had not the faintest idea of their duties and powers. When the first bill was submitted to them by the khédive, and they were asked to signify their approval or disapproval, there was not a dissenting vote against the measure. For, they said, his Highness is the representative of Allah; and his will, like that of Allah and the Prophet, is our law. But this political simplicity vanished before the end of Ismail's reign, though the voice of the parliament was still recognized as the khédive's voice.

It is only fair to Ismail that a somewhat detailed statement

[1] In an interview with Mr. Rivers Wilson, August 23, 1877, Ismail said: "My country is no longer African; we now form part of Europe." From *Annual Cyclopædia* for 1877.

[2] Mr. McCoan, in "Egypt As It Is," page 117, thus describes the functions of the assembly: "In 1866, the Khédive revived the defunct Assembly of Delegates, one of the inchoate reforms projected by Mehemet Ali, but which had not met since his death. This germ of an Egyptian Parliament consists of village sheikhs and other provincial notables, elected by the communes, and assembles once a year to receive from the Privy Council a report on the administration during the twelvemonth. Its function is also to consider and advise on all proposed fiscal changes, new public works, and other matters of national concern that may be laid before it. It has, of course, no legislative power; but in practice its recommendations are received not merely with respect, but are often acted on by the Government."

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should be made of the amounts expended by him in public works; for, having seen how one loan after another was received, the question naturally arises: Where did the money go? There was a considerable sum that the greed of money-lenders did not absorb in commissions and interest, and a large part of this went into public works. Mr. Mulhall gives the following table of works established between 1863 and 1879, in his article on "Egyptian Finance":[1]

Work.	Amount.	Observation.
Suez canal . . .	£ 6,770,000	After deducting value of shares sold.
Nile canals . . .	12,600,000	Made 8,400 miles at £1,500 per mile.
Bridges	2,150,000	Built 430 at £5,000 per bridge.
Sugar-mills . . .	6,100,000	Built 64, with machinery, *etc.*
Harbor Alexandria	2,542,000	Greenfield and Elliott contract.
Suez docks . .	1,400,000	Dussaud Bros.
Alex. water-works	300,000	Price agreed by Paris Syndicate.
Railways . . .	13,361,000	Length 910 miles, new.
Telegraphs . . .	853,000	Length 5,200 miles, new.
Lighthouses . .	188,000	Built 15 on Red Sea and Mediterranean.
	£46,264,000	

We see thus that Ismail expended on works of public utility not less than forty-six millions sterling. Now, as the loans contracted by him netted only about forty-five millions, his admirers and defenders say at once that he did not squander, but that he spent all for the public weal. But there is the item of revenue, which these writers do not consider, and which yielded the government, in the sixteen years of Ismail's reign, not far from one hundred and fifty millions. How large a part of this was wasted by Ismail we can only guess; but we may be sure that all those millions did not go toward defraying necessary governmental expenses. The canals, railways, bridges, docks, *etc.*, were the best work of Ismail's reign if the financial side of the question be left out of consideration. They brought in, it is true, a certain revenue, but this was by no means equal to the interest on the debts incurred to make the improvements. Where national development is only secured by contracting with each change a counterbalancing debt, it is doubt-

[1] *Contemporary Review*, October, 1882.

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ful if the changes can be considered beneficial. There were, however, certain other outlays by Ismail that were of unquestionable advantage to the land, even though they produced no revenue. He established 4,632 public schools, with 5,850 teachers, drawing salaries that ranged from £24 to £84 a year, and expended in the sixteen years of his reign no less than £3,600,000 for this purpose. He organized village banks — we will say with philanthropic intent to protect the fellahîn from the money-lenders — and lost £900,000 by the experiment. And he lost largely on the shares he took in the Nile Steam Navigation Company. On the other hand, just at the time of the financial difficulties of 1873, he embarked upon a war with Abyssinia which despoiled the Egyptian treasury of not less than £3,000,000. He squandered a vast sum in building palaces and theatres and in the entertainment of distinguished foreigners. His expenditures at the time of the opening of the Suez canal were simply enormous. He gave bribes and presents at all times with true Oriental prodigality. Even if he could have afforded these outlays, they would have been foolish; as it was, they were wicked. And yet, as Mr. Mulhall says, "whatever the faults, he raised Egypt in the scale of nations"; for there was an actual progress between the death of Said and the accession of Tewfik. It may be measured in the following table, prepared by Mr. Mulhall:[1]

PROGRESS OF EGYPT IN SEVENTEEN YEARS.

	LAST YEAR OF SAID PASHA. 1862.	LAST YEAR OF ISMAIL PASHA. 1879.
Acres tilled	4,052,000	5,425,000
Value of imports	£1,991,000	£5,410,000
Value of exports	£4,454,000	£13,810,000
Revenue	£4,937,000	£8,562,000
Public debt	£3,300,000	£98,540,000
Number of public schools	185	4,817
Railways — miles	275	1,185
Telegraphs "	630	5,820
Canals "	44,000	52,400
Population "	4,883,000	5,518,000

[1] *Contemporary Review*, October, 1882.

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If from this table could be excluded that decidedly negative item of progress denoted by the public debt in 1879, there would remain a good showing for Ismail; but that one item cancels all the others, even as it was the primal cause of Ismail's overthrow.

There was another reform, which has not yet been noticed because bearing no direct relation to finances, that was accomplished during Ismail's reign, and for which he must, at least indirectly, be credited — the reform in judicial procedure. There had come to be a very pernicious increase of consular jurisdiction in Egypt after the death of Mehemet Ali. The native had to bring a suit against a foreigner in the foreigner's consulate, where he was almost sure to be denied justice. With as little chance of justice, also, the foreign plaintiff had to sue the foreign debtor in the latter's consulate. Some consuls even claimed the right to sit in judgment of cases in which the natives were defendants. The government suffered too. It was estimated, says Mr. McCoan,[1] that, in the four years preceding 1868, consular influence extorted from the government £2,880,000 in satisfaction of claims, without judicial sanction of any kind. "The whole system," he goes on to say, "was, in fact, a scandal and a denial of justice all around." It was, if anything, worse in criminal than in civil matters. The abuses were so flagrant that Nubar Pasha, in 1867, proposed a scheme of reform to the khédive. It was submitted to France, but was unfavorably received. England, however, when approached on the subject, promised to give the reform her hearty support, provided the other powers would concur. They did so in the fall of 1869. Negotiations, however, were interrupted for a time by the war between France and Germany; and when they were renewed, in 1871, the sultan entered his veto against the scheme, though he afterward withdrew it at the demand of England and Russia. France now offered objections once more, and the negotiations dragged. Some of her amendments were accepted; but it was not until December, 1875, that the scheme was finally agreed to.

[1] Egypt As It Is, p. 276.

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The reform was inaugurated in February, 1876, to continue in force for five years. It is thus described by Mr. McCoan :[1]

> As now constituted the new system includes three tribunals of first instance — one at Alexandria, a second at Cairo, and a third . . . at Zagazig — and a Court of Appeal, which also sits at Alexandria. Of the inferior courts, that at Alexandria — divided into two chambers, with equal jurisdiction — consists of fourteen judges, of whom six are natives, and eight Europeans; that at Cairo, of three natives and five foreigners; and that at Zagazig, of three natives and four foreigners. The nominal chiefs of all three are natives, but foreign vice-presidents actually direct their proceedings. In the Court of Appeal the alien element is still more preponderant, the bench of eleven judges there consisting of seven foreigners and only four natives. . . . The judicial and other personnel is thus complete, and the jurisdiction exercised includes all civil disputes between the government and natives on the one hand, and foreigners on the other, as also those between foreigners of different nationalities; and all suits and registrations of sale and mortgage whatsoever of real property.

Such was the reform inaugurated; and a most excellent one it was. Not forgetting that Nubar was its author, we give the credit of it to Ismail's reign, just as we lay the blame of the mûffetish's villany at his door. If all his changes had been as wisely carried out, his ambitious designs of raising Egypt to the plane of European civilization would not have failed so utterly of realization. In this connection we must refer to Ismail's appointment, first of Sir Samuel Baker and then of Colonel Gordon, as governors-general of the Sûdan and of his apparently earnest attempts to suppress the slave trade. He gave Gordon unlimited power to "punish, change, and dismiss" officials, and assured him that Egypt would loyally support England in this "measure of humanity and civilization." We shall see later how Baker and Gordon succeeded in their missions.

Long before his collapse the shrewd Ismail must have known that his reign was doomed; but he kept on his high-handed course to the end. The discharge of the European administrators and the virtual repudiation of debts were his last acts of

[1] Egypt As It Is, p. 280.

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bravado. Powerless and empty-handed, he made no protest against the firman of deposition. But "it would be a mistake," writes Mr. Edward Dicey [1] "to attribute Ismail Pasha's collapse to lack of personal courage. I should doubt his possessing any exceptional physical bravery; but he had to a remarkable degree the gambler's instinct and the gambler's boldness. He was not the man to forfeit his stakes while there was a chance, however remote, of holding on to his winnings. He threw up the game simply and solely because he knew better than any one else that he had absolutely no cards in his hand." His people suffered him to depart into exile without a protest or a murmur. It is true that "the resident European community" — to quote Mr. Dicey's words once more — "to whom he had always been friendly, and who had partaken freely of his lavish hospitality, stood by him in his disgrace, and his departure into exile was accompanied by sincere expressions of regret on the part of the court circle and the European embassy, but without one solitary manifestation of sympathy on the part of the Egyptian population."

JOHN ELIOT BOWEN.

[1] *The Nineteenth Century*, February, 1880.

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REVIEWS.

Seventeenth Annual Report of the Bureau of Statistics of Labor [Massachusetts]. Boston, 1886. — xviii, 393 pp.

Eighth Annual Report of the Bureau of Statistics of Labor and Industries of New Jersey. Trenton, N.J., 1885. — xxxvi, 422 pp.

Third Annual Report of the Bureau of Statistics of Labor of the State of New York. Albany, 1886. — 653 pp.

The value of these labor bureau reports will be found to be more in the general information they give than in any statistical inquiries made or conclusions drawn. In fact, the Massachusetts and New York reports contain really no statistics, and the New Jersey bureau adheres to the defective methods of getting wage-statistics which I have criticized in a previous number of the QUARTERLY.

On the other hand, some of the information they give is of very considerable interest and can certainly be said to be timely. For instance, the Massachusetts bureau has an intelligent sketch of co-operation in Europe and a still more important review of profit-sharing in the United States. The New Jersey report contains a similar description of the development of the co-operative movement and also a very careful history of the labor legislation of New Jersey. It might, perhaps, be suggested that all this is information *for* the laboring class rather than information *about* it, but it is well not to be too critical. Both employers and employees, as well as the general public, want all the information they can get on these topics, and the bureaux may as well furnish it.

As to the real condition and wants of the laboring class, the New York report gives us a great mass of testimony from employers and employees. This testimony, although very voluminous and not always clear, is interesting and instructive. It shows, at any rate, what are the current beliefs and notions of workingmen in regard to strikes, arbitration, boycotting, foreign labor, the eight-hour labor day, *etc.* It seems that the workingmen look upon strikes and boycotting as necessary weapons in their hands, although many of them favor arbitration, which in numerous instances is already resorted to. There comes out in the testimony also a very decided feeling against imported labor, and some desire for a shorter working day.

RICHMOND MAYO SMITH.

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Essays in Finance. By ROBERT GIFFEN. Second Series. New York, G. P. Putnam's Sons, 1886. — 8vo, vi, 474 pp.

These essays, most of which have already appeared either in the *Journal of the London Statistical Society* or in the newspapers, reveal the strength and the weakness of this well-known statistician. Mr. Giffen is strong in his wide and thorough knowledge of commercial and financial statistics and in the acuteness and skill he displays in handling them. He betrays his weakness in the dogmatic determination to make the figures support the thesis with which he starts out, and in a tendency to build up an elaborate superstructure on foundations whose weak character he seems to forget. The essays are therefore of varying degrees of value, and very often in the same paper we appreciate the statistical information while not acquiescing in the conclusions. The essays may be grouped under four heads; *viz.*, Labor, Money, Trade, and Statistical Science. This is not the arrangement of the book, but is the really logical one, and it will be convenient for us to follow it in our analysis.

Beginning then with the last two essays in the volume, Mr. Giffen sustains the thesis with which his name is so closely connected; *viz.*, that the condition of the working classes has enormously improved during the last fifty years. The general conclusions of the original essay, *On the Progress of the Working Classes*, have never been successfully refuted. In a supplementary essay, entitled *Further Notes on the Progress of the Working Classes*, the author answers his critics and strengthens his position by citing general historical evidence of the miserable condition of the laborer a half-century ago. Here he does not insist so much upon the exact statistical measurement of the progress as upon the general evidence that there has been progress. This is a distinct gain for statistical science, which is always weakest when it demands most.

The first four essays of the book, which we have classed under the head of Money, sustain the thesis that the present low prices are due to a scarcity of gold. To the objection that instruments of credit now take the place of specie-money, so that a mere scarcity of the metal can have very little influence on prices, the author answers that the supply of gold affects prices through the bank reserve and the rate of discount. This reply does not seem to me conclusive, and Mr. Giffen scarcely notices the other cause assigned for the present low prices; *viz.*, improvements in production and transportation, which give us greater quantities of wealth with less labor.

The next three essays defend the free-trade policy of England; and the one entitled *The Use of Import and Export Statistics* is the most valuable one in the book. It is really an essay on statistical method and the difficulties and dangers in the use of statistics. Here the author's

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long experience in administrative affairs and his technical knowledge have an admirable opportunity to display themselves. Probably no one but a practical statistician could have given such an exposition of the varying elements which influence the figures commonly supposed to indicate the course of trade. Economists owe a debt of gratitude to Mr. Giffen for this practical guidance in the use of the material furnished by public documents and official publications. Would that there were more administrative officers like him, who would throw the white light of science into those official figures which, as they are commonly published, are either confusing or misleading, or both.

If Mr. Giffen is strong as a statistician, we can hardly say as much of him as a philosopher and a political scientist. There are two essays in this volume, the eighth and ninth, on the general use of statistics, which are difficult to characterize. One is his inaugural address as president of the Statistical Society in 1882, and the other was read at the "jubilee meeting" of the Statistical Society in 1885. In such papers, coming from the greatest living statistician in England, read before so distinguished an audience, and upon such occasions, one would expect a profound and philosophical *exposé* of the relations of statistical science to the general realm of human knowledge. At the least, one had a right to expect that the wide experience of the author would make such an *exposé* interesting and suggestive. The two essays are neither philosophical nor interesting. They are trivial. They deal with the most commonplace relations and point out the most ordinary conclusions. They do not even touch on the great function which statistics exercises in attempting to discover and formulate principles of social science. One would think Mr. Giffen had never heard of Engel, Mayr, Knapp, Morpurgo, and Gabaglio, — authors who have expounded brilliantly those curious and important social relations revealed to us by statistical science.

Finally, I cannot forbear mentioning the very extraordinary views which the author takes of the conclusions to be drawn from the statistics of increase of population and wealth in modern times. This view is that the functions of government are decreasing! He declares (page 302) that "the governments are becoming powers with a limited range of action only," because of the increasing complexity of interests in modern society; that the old functions of government — "the maintenance of internal order, the punishment of crime, external war, the regulation of successions to property, the teaching of religion perhaps" — are some of them "falling more and more into the hands of voluntary agencies," and others are "becoming less important relatively than they were to the general interests of the community"; that the people are losing their interest in politics, and the only importance which politicians still have is due to the fact that they have the expenditure of vast sums of money

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and so may do considerable mischief. It is difficult to see exactly how these conclusions can be drawn from the statistics presented, and still more difficult to reconcile them with recent legislation in England and the rest of the civilized world.

RICHMOND MAYO SMITH.

Zur Beleuchtung der socialen Frage. Theil II. Von DR. CARL RODBERTUS-JAGETZOW. Herausgegeben aus seinem literarischen Nachlass von Theophil Kozak und Adolph Wagner. Berlin, 1885. — 282 pp.

Das Kapital: Kritik der politischen Œkonomie. Von KARL MARX. *Bd. II. Der Circulationsprocess des Kapitals.* Herausgegeben von Friedrich Engels. Hamburg, 1885. — 526 pp.

Nearly all the works which Rodbertus left unpublished at his death have now been issued. The book before us, Professor Wagner announces to be the last of the series which he will edit. The letters of Rodbertus to Lassalle, however, still remain unpublished, and it is possible that an *Outline of Social Science* may yet appear. These will complete the writings which Rodbertus left in such condition that they can be prepared for the press.

The issue of the literary remains of Marx will also soon be completed. Friedrich Engels, who has charge of his papers, says that the volume just published will be followed by another, presumably on the consumption of capital, to which will be added a critical history of the doctrine of surplus value (*Mehrwerth*).

In 1875 the *Second and Third Social Letters* of Rodbertus to von Kirchmann were republished together, under the title *Zur Beleuchtung der socialen Frage*. What the author had completed of the second part of that work is now issued for the first time, together with a reprint of the *First Letter*. The new material consists, first, of an attempt to prove statistically, from the conditions of England, Rodbertus' favorite proposition, that, with the development of society under its existing form, the laborer necessarily receives "an ever-decreasing share of the value of his product." But this is of little value, because the figures, which are borrowed from Dudley Baxter's book on *National Income*, and from Colquhoun, a statistical writer of the early part of this century, are not reliable. Altogether, the most important part of the work is the fragment at its close, which sets forth more at length than anything hitherto published the views of Rodbertus concerning the method of transition from the present social order to the socialistic state. Here his conservatism as compared with Marx clearly appears. Among the measures recommended are the gathering of statistics; the removal of

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taxes on articles that support life; taxation of stock transactions and of money capital in general; the introduction of the "normal labor-day"; inspection of factories, and gradual extension of state enterprise. Rodbertus everywhere maintains that the wage system must not be abandoned.

The dispute which has been going on for several years between the champions of Marx and Rodbertus over the respective claims of the two leaders to originality and priority, may now be considered settled. Rodbertus was the first to reduce to writing the socialistic theory in its modern form. In 1837 he sent a letter to the *Augsburger Allgemeine Zeitung* for publication, but it was rejected. It contained the substance of the theory to which he adhered through life. A part of this letter was published some years ago by R. Meyer, but Professor Wagner now issues it in its complete form. At the same time Engels satisfactorily clears Marx from the charge of plagiarism. He first heard of Rodbertus through Lassalle in 1859. By that time Marx had constructed his theory, at least in outline.

Those who expect to find anything especially new or striking in the second volume of *Das Kapital* will be disappointed. All the faults of style and method which disfigured the first volume appear intensified in this. There is not the slightest attempt at induction.

Marx naturally treats the circulation of capital from a social point of view. By circulation he means the entire process through which capital passes on its way from the raw material to the perfected product in the hands of the consumer. Production is really the middle stage of the process. Surplus value is increased by all the labor spent in the work of distribution. The part played by money is illustrated by conceiving distribution to be divided into periods of unequal length, at the end of which money is set free for future investment. The costs of circulation are the time consumed, the book-keeping, the expenses of transportation and storage, and the wear and tear of money. As might be expected, time forms an important element. The unit of measure in distribution is the year, while in production it is the day. The rate of surplus value is to be reckoned by the year.

Adam Smith's theories of exchange value and revenue are criticised at length. Smith began with the doctrine that labor is the only source and measure of value. But, blinded by the capitalistic form of production, he afterwards introduced the idea that wages, profit, and rent are the "components" of value. Against this confusion Marx protests. According to him national revenue consists not of wages, profit, and rent, but of wages and surplus value.

Marx always has in view the existing form of society, but in the present volume he constructs no indictment against it beyond that

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which is furnished by his theory of the origin of surplus value. He does not raise the question of distributive justice. The influence of speculation is scarcely noticed. That which is, exists, according to Marx, by virtue of an immediate law of development, and it will be removed by the operation of that law.

HERBERT L. OSGOOD.

Protection or Free Trade: An Examination of the Tariff Question with Especial Regard to the Interests of Labor, by HENRY GEORGE. New York, Henry George & Co., 1886.—356 pp.

In the first twenty of the thirty chapters of this book Mr. George argues in behalf of absolute freedom of international exchanges — finding a tariff for protection an objectionable means to an undesirable end, and condemning also a tariff for revenue on grounds of economy and of the unjust and oppressive incidence of such taxation upon the poor. While a comprehensive and clear restatement of the anti-tariff argument is given, especial attention is paid to the relation of protection to wages and to the interests of labor as involved in the tariff question. Having expounded the merits of a certainly broad conception of free trade, Mr. George then sets himself to show that this conception is not yet broad enough, and is only fulfilled in the free access of "the active factor of production, Labor," to "the passive factor of production, Land."

> For [inquires Mr. George] what have we proved as to the main issue? Merely that it is the *tendency* of free trade to increase the production of wealth and thus to *permit* of the increase of wages, and that it is the *tendency* of protection to decrease the production of wealth and foster certain monopolies. But from this it does not follow that the abolition of protection would be of any benefit to the working class.

Next appears, in substance, the remarkable dogma of *Progress and Poverty*, that the whole effect of any increase in the production of wealth is to enhance the demand for land. Mr. George declares, for instance, that

> the robber that takes all that is left is private property in land. Improvement, no matter how great, and reform, no matter how beneficial in itself, cannot help that class who, deprived of all right to the use of the material elements, have only the power to labor . . . (Page 285.)

Mr. F. A. Walker, in his *Land and Rent*, would seem to have made clear enough the utter untenability of Mr. George's proposition, that the entire effect of an increase of production is expended in raising rents; but in such statements as that above quoted, the proposition, at least as far as wages are concerned, is substantially reasserted without reference to criticism.

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This assertion accepted, it is easy to understand why monopolies, bad systems of currency, finance and taxation, standing armies, *etc.*, are matters of minor importance at present in social philosophy, since "these are the lesser robbers, and *to drive them off is only to leave more for the great robber to take.*" (Page 286.) The remedy is to be found in the development of the free-trade principle, so

> that the taxation of land-values to which true free trade compels us to resort for public revenues, should be carried far enough to take, as near as might practically be, the whole of the income arising from the value given to land by the growth of the community. (Page 309.)

Taxes in accordance with the free-trade principle are taxes on ostentation (not of practical importance), and taxes on land values, which

> do not fall upon all land, but only upon valuable land, and on that in proportion to its value. Hence they do not in any degree check the ability of labor to avail itself of land. (Page 307.)

The carrying out of the principle involves such an increase of public revenues, with concomitant reduction in public expenses, that a great fund would inure for social purposes now neglected, so that the aim of true free trade may be thus phrased: "No taxes at all, and a pension to everybody." But this fund is to be gained by simple confiscation.

The questions raised in this, as in Mr. George's previous writings, concern the facts in regard to the condition and prospects of labor, the causes of any failure or inadequacy in economic distribution, and the possible remedies for alleged evils. As to the facts referred to, it is well known that our author is not likely to understate them. In the present volume he speaks of the

> tendency which, as wealth increases, makes the struggle for existence harder and harder. This tendency shows itself throughout the civilized world and arises from the unequal distribution which everywhere accompanies the increase of wealth.

His statements are made broadly and without reference to recent investigations of the subject, except that the results of Professor Thorold Rogers' inquiries in regard to English work and wages are referred to as if affording some confirmation of the view that the absolute as well as relative condition of the laborer has declined with the modern advance in wealth. But Professor Rogers' conclusions, on the whole, support Mr. George's position only as regards the relative, not the absolute, condition of English labor; and in the second volume of *Six Centuries of Work and Wages*, Mr. George's *Progress and Poverty* is referred to as "a sketch of social life which was characterized by growing evil and

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waning hope," with the observation that "the sketch was not lacking in that probability which is frequently unreal, because it is based on appeals to narrow or exceptional experiences."

But whatever the state of the facts in this regard, the problem of distribution is certainly just now the problem in social economy, and the study of causes of, and remedies for, disorders in the economic organism is urgently required. Here is eminent opportunity for the application of the "historical method"; and certainly it is not here, if anywhere in political economy, that the rhetorical method can be employed to advantage. Professor Rogers has significantly said, in regard to the need of investigating these troubles in their remote sources, that "till we understand the causes, we shall be offered remedies which are more dangerous than the disease."

The unearned increment of land, the wealth which grows while the owners sleep, has invited for a long period the thoughtful attention of economists; notably so in England, and necessarily so in view of her peculiar land-laws and long-swelling rent-rolls; but also in an increasing degree in this country. Here the pressure of indirect taxation upon the cost of living, the rising rents in towns and cities, the absorption by western land-barons of the public domain, the heritage of the poor, all predispose many of those hard pressed in the struggle for existence to give interested attention, at least, to such teachings as those of Mr. George's book. But the exaggeration of the evil due to one among many causes of our social ills, and the insuperable difficulties as to equity, practicability, and adequacy to its end, attending the drastic remedy proposed, will also not escape the attention of intelligent readers. Yet the volume may well increase the interest of the people in the incidence of taxation and in efforts toward so disposing its burden that it may be most easily borne, while at the same time correcting in some degree inequities of economic distribution which could not otherwise be remedied.

GEORGE B. NEWCOMB.

American Diplomacy and the Furtherance of Commerce. By EUGENE SCHUYLER, Ph.D., LL.D., Corresponding Member of the Roumanian Academy, *etc.* Lately Minister of the United States to Greece, *etc.* New York, Charles Scribner's Sons, 1886. — 8vo, 469 pp.

The books that have been written by American authors on our governmental and administrative system have been, in the main, of two kinds. They have been either simple books of reference, suited only to the use of the lawyer, or they have been so purely popular in character as to be almost valueless from a scientific point of view. It is, therefore,

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with a sense of relief that we pick up Mr. Schuyler's *American Diplomacy*, in which the attempt is made to treat the problems which come up in the organization of our diplomatic and consular services in a scientific and scholarly manner. The appearance of the work at this time is all the more valuable on account of the discussion now going on relative to Mr. Belmont's consular service bill in the Congress of the United States.

The work is divided into two parts: the first treating of the State Department and the consular and diplomatic services; the second, being a short history of those of our diplomatic relations whose *aim* has been the furtherance of commerce. It treats of such subjects as the piratical Barbary powers, the right of search and the slave trade, the free navigation of rivers, the fisheries, *etc.*

The first part will probably attract the greater notice and be of the greater value. It gives a succinct description of our entire diplomatic machinery and a criticism, by one knowing its defects, of our existing methods of filling the positions in our foreign service. The suggestions of reform that are made, though not in any way new, are none the less valuable. What Mr. Schuyler wishes is that our foreign service should cease to be of a political character, and should be made permanent, and that our officers should be treated as lawyers who are simply to advocate the views of the administration which they serve, regardless of their own political opinions. Great emphasis is laid on the fact that our ministers and consuls are, as a rule, unfitted by education for the posts to which they are sent; and it is shown how important it is considered, abroad, to require of all applicants for positions in the foreign service knowledge of some language — especially French — and of public law. Mr. Schuyler complains also of the inadequacy of the salaries of most of our officers. He shows that, in general, these positions are not — what so many consider them — easy berths in which the unfortunate can be placed by their influential friends. Far from it; the average consul is overworked and poorly paid, while most ministers must have recourse to their private means in order to live as their position requires. This book will do a great service if it shall deter unfit persons from applying for positions by showing how false the popular opinion is.

Another point is also made clear, which is not generally recognized. Most people seem to lay no weight on the social standing of a diplomatic representative. Mr. Schuyler endeavors to show how important this is. Indeed, it may be that he lays too great stress upon it. But in support of his views he cites several cases where important matters have been brought to a successful termination by a simple informal conversation between our diplomatic representatives and officers in the departments of foreign affairs abroad — a result which would not have been

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possible had our representatives not enjoyed that respect which a good social standing does so much to ensure. Mr. Schuyler makes one criticism on the classification of our diplomatic officials which is quite new. He says on page 175 that

> owing to the habit of considering our missions abroad simply as convenient places to dispose of political partisans who are desirous of obtaining a good sinecure, or who have failed of re-election by their constituents, our legations have generally been classified according to the amount of salary paid to them, although this should be considered simply as an equivalent for the various expenses necessary in different places. I should be disposed to arrange our missions abroad very differently, according to their relative importance.

He places England in the first place, then Spain, then Mexico and the countries in Central and South America where we wish to preserve a political as well as a commercial predominance, then Eastern Asia, and finally, Germany, France, and the other European countries.

The second part of the work, as its title indicates, treats only of the history of those diplomatic negotiations whose principal aim has been the furtherance of our commerce. The book is therefore not a complete history of American diplomacy. Some of the most important subjects of diplomatic action have been completely omitted. A striking example of this is the subject of the right of expatriation and the treatment of our naturalized citizens, which, as everybody knows, has been one of the most fruitful sources of diplomatic controversy, but to which Mr. Schuyler makes hardly a reference. Notwithstanding this incompleteness, the historical portion of the work is interesting, as showing the advanced position our State Department has so often taken in opposition to existing views of international law — a position which, in course of time, has frequently become the accepted one.

This is brought out with special clearness in the discussion of the free navigation of rivers. There are here, however, occasional errors which would seem to indicate that the author has not examined his authorities as carefully as he should have done. For instance, he quotes the Brazilian decree of 1867 as opening certain rivers up to the point at which the banks belong to different contiguous states. This is what is said in the introduction to the decree; but the decree itself opens the rivers up to certain cities, and as these cities are at the mouths of the rivers, the fact, of course, is that the rivers remain practically closed to navigation.

The chapter on the fisheries' question is valuable in that it gives an exact and accurate description of a subject which has attracted much attention during the past year.

As a whole, *American Diplomacy* is a valuable contribution to the

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American literature of political science. The typographical appearance of the work is attractive, and the copious index with which it is provided makes it useful as a book of reference.

FRANK J. GOODNOW.

Handbuch des Völkerrechts, herausgegeben von Dr. FRANZ VON HOLTZENDORFF. *Bd. I. Einleitung in das Völkerrecht.* Berlin, 1885. — 523 pp.

This is the first or introductory volume of what promises to be a valuable contribution to international jurisprudence. Without entering, as is customary with writers on this subject, upon a lengthy discussion of the various names that have been given to this science and a confutation of them all, the author opens the ground with fifty-nine short chapters which together define the scope of international jurisprudence, the domain of science within which it falls, its sources, and its tendencies. These chapters reveal profound thought, a clear conception of the object and the mission of international law, and a thorough understanding of this complicated branch of political science. They are written in concise and forcible language, and furnish an admirable foundation for the analysis of the principles which will be the subject of the succeeding volumes. The second part of this volume is devoted to an examination of the historic development of international law down to the treaty of Westphalia; and the third reviews the literature of the various systems and theories of international law since Grotius.

This volume has two striking features. The first is the powerful argument it contains in favor of the positivity of the law of nations, and the forcible manner in which the distinction is drawn between the law of nature and international law. The reasoning on this subject is not only powerful, but it is exhaustive; and it is refreshingly free from all hackneyed arguments and illustrations. It meets the objections of the Moralists on the one hand and of the Civilians on the other, and makes clear the distinction between the moral sanction (*Rechtspflicht*) and the physical sanction (*Rechtszwang*) — two things which, as the author points out and insists, do not necessarily go together.

The second feature of this work, which deserves special notice, is its recognition of the importance of the work of Latin-American statesmen and publicists in the domain of diplomacy and international jurisprudence. In this, as in other matters, ignorance of the subject has led to the assumption of its non-existence; and writers on international law have hitherto passed over the labors of Latin-American publicists with hardly a word, if not in absolute silence. But the same causes that produced among the small republics of former days in the north of Italy a large

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body of able statesmen are to be found to-day in operation in Latin-America, and are there producing the same effects. International jurisprudence is pre-eminently the science which the precarious existence of Latin-American states causes to flourish among their people. The *Einleitung in das Völkerrecht* is the first work of importance on international law that, realizing this fact, gives an extensive (although by no means complete) review of Latin-American publicists and their works.

In every respect the first volume of the *Handbuch des Völkerrechts* bears the stamp of originality of research, of thought, and of conclusions; and the character of this volume justifies the belief that, when completed, the work will mark an epoch in the history of the literature of international law.

DANIEL DE LEON.

Répertoire des travaux historiques, contenant l'analyse des publications faites en France et à l'étranger sur l'histoire, les monuments, et la langue de la France, pendant l'année 1883. Tome III., Paris, Imprimerie Nationale.

This periodical, started in 1882 and beginning with the publications of 1881, has for its object to give the title of all publications relating in any way to France, — its history, politics, law, literature, economic conditions, *etc.*, — issued during the year in France or elsewhere, whether in separate form as book or pamphlet, or in periodicals and transactions of societies. It gives with each title a short notice, setting forth the nature and scope of the publications, and rather hints at than expressly states the quality of the work. How extensive an undertaking this is, and how useful it must be, will be shown by the number of entries in the volume for 1882, which was 6,334. A copious index covering many pages gives ready access to its contents. The work seems to be done with as much thoroughness and fulness as could possibly be looked for in so great an undertaking. The names of the editors or reviewers are attached to each section, and comprise well-known authorities in the several departments of historical and economic science who are co-operating in this enterprise. The work itself is printed at government expense in the *Imprimerie Nationale*, and is an example of how much is done in Europe in some directions for historical and political science. Of how great value to the student of American affairs would be a similar work, bringing together the innumerable books, pamphlets, essays, and studies on America. Possibly a national historical organization might contribute more to science by thus making accessible to students the vast number of studies now published yearly, than by increasing their number by a few each year.

GEORGE H. BAKER.

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